

United States
4
Circuit Court of Appeals
For the Ninth Circuit.

HATTIE HARDESTY CHAPMAN,
Appellant,
vs.

R. M. SIMS, Trustee in Bankruptcy of THE
REALTY UNION, a Corporation, Bankrupt,
Appellee.

Transcript of Record.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
First Division.

FILED

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F. D. MONCKTON,

CLERK.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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WM. M. AYDELOTTE,
C. A. S. FROST,
W. F. SULLIVAN,

Attorneys for Hattie Hardesty Chapman, 112 Market Street, San Francisco.

[Endorsed]: Filed Oct. 5, 1917, at 11 o'clock and 30 min. A. M. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [1*]

(Title of Court and Cause.)

(Order for Adjudication, Referring Matter to Referee and Designating Newspaper.)

At San Francisco, in said District, on the 11th day of September, 1915, before the said Court in

*Page-number appearing at foot of page of original certified Transcript of Record.

Bankruptcy, the petition of Susan L. Locke, Wallace H. Locke and Nettie Huntington Post that The Realty Union, a corporation, be adjudged bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said The Realty Union, a corporation, is hereby declared and adjudged bankrupt accordingly.

It is thereupon ordered that said matter be referred to A. B. Kreft, one of the Referees in bankruptcy of this court, to take such further proceedings therein as are required by said Acts; and that the said The Realty Union shall attend before said referee on the 21st day of September, 1915, at his office in San Francisco, California, at 10 o'clock forenoon, and thenceforth shall submit to such orders as may be made by said referee or by this Court relating to said matter in bankruptcy.

It is further ordered that all notices required to be published in the above-entitled matter, and all orders which the Court may direct to be published, be inserted in The Recorder, a newspaper published in the City and County of San Francisco, State of California, within the territorial district of this court, and in the county within which said bankrupt resides.

Dated, September 11th, 1915.

M. T. DOOLING,
District Judge.

[Endorsed]: Filed at 11 o'clock A. M., Sep. 11, 1915. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [2]

(Title of Court and Cause.)

Petition for Order of Sale.

To the Honorable the District Court of the United States, for the Northern District of California, and to Hon. A. B. KREFT, Referee in Bankruptcy in and for the City and County of San Francisco, State of California.

R. M. Sims, trustee of the estate of the above-named bankrupt, respectfully represents to this Honorable Court:

1.

That among the property belonging to the estate of said bankrupt, and which has come to and is now in his possession, are certain pieces of real property hereinafter designated by numbers from 1 to 37 inclusive, and 38(1), 38(2), 38(3), and 38(4). Said parcels are described in order on pages attached at the end hereof, each particular parcel being identified by the proper designation preceding the description, the word and figure "Parcel 1," preceding the description of Parcel 1, the word and figure "Parcel 2" preceding the description of Parcel 2, etc.

2.

All said lands belong to the estate of said bankrupt, subject only to the encumbrances, liens and

claims hereinafter mentioned.

* * * * *

7.

That on April 12, 1912, Caro Mills conveyed by deed of trust said Parcel 30 to Charles T. Rodolph and E. H. Cramer, to secure the payment to Union Savings Bank, a corporation, of five thousand dollars (\$5,000), due April 12, 1913, [3] with interest at 6% per annum, such indebtedness being represented by promissory note. Said real property was conveyed to The Realty Union subject to said mortgage.

Said deed of trust is recorded in Liber 2021 of Deeds, page 389, records of the Recorder's Office of Alameda County.

By assignment J. F. Carlston and Arthur L. Harris are now trustees under said deed of trust.

By assignment and transfer Central National Bank of Oakland has become the owner of said note and security.

* * * * *

91/2.

That on July 28, 1914, Roosevelt Johnson mortgaged to the Hibernia Savings and Loan Society, Parcel 31, to secure the payment of a promissory note in the principal sum of five thousand dollars (\$5,000).

That said mortgage is recorded in Liber 1069 of Mortgages, page 396.

That on July 28, 1914, Roosevelt Johnson mortgaged to Hibernia Savings and Loan Society said

Parcels 31 and 32, to secure the payment of a promissory note in the principal sum of five thousand dollars (\$5,000), with interest at 6½% per annum.

That said mortgage is recorded in Liber 1075 of Mortgages, at page 14.

* * * * *

24.

That on May 11, 1915, Hattie Hardesty Chapman began an action to enforce a vendor's lien on Parcel 31. Said action is still pending, the petitioner having obtained time to appear therein. It is averred in said suit that Parcel 31 and other lands were exchanged for an Investment Certificate about one [4] year prior to the commencement of the suit. Petitioner avers that said action is without merit in view of the fact that investment certificates were taken in exchange, which certificates contained many provisions other than promises to pay money.

Wm. Aydelotte, Esq., Hearst Building, San Francisco, California, is attorney for plaintiff.

25.

The extent of the overlapping of securities is set forth in this paragraph. The trust deeds hereinbefore mentioned will be referred to by the names of the beneficiaries, and the mortgages by the names of the mortgagees. The actions will be referred to by the names of the plaintiffs. Taxes for the year 1914-5 remain unpaid on all the property, and such liens are omitted.

TRUST DEEDS.

* * * * *

(e) The Caro Mills (now Central National Bank of Oakland) trust deed, dated April 12, 1912, (paragraph 7 hereof) for \$5,000, covers Parcel 30; and there are no other valid liens against the property.

* * * * *

MORTGAGES.

(h-2) The Hibernia Savings and Loan Society mortgage dated July 28, 1914 (paragraph 9½ hereof) for \$5,000, covers Parcel 31 and said property is encumbered by a second mortgage to the same mortgagee for \$5,000, as shown in the next sentence.

Parcel 31 is subject to the claims of the Chapman suit (paragraph 24 hereof).

(h-2) The Hibernia Savings and Loan Society mortgage, dated July 29, 1914, (paragraph 9½ hereof), for \$5,000, covers Parcels [5] 31 and 32, and Parcel 32 is otherwise unencumbered by valid liens.

* * * * *

26.

That your petitioner is advised and believes and alleges that the value of the security hereinbefore mentioned in the case of each loan is very considerably in excess of the amount of the loan. That a sale of said property is necessary to pay the claims of creditors herein. That owing to the confusion in and overlapping of liens, a sale in this court will be for the best interest of the estate of said bankrupt.

That in the judgment of said trustee, it will be

for the best interests of the unsecured creditors of the estate of said bankrupt holding claims amounting to approximately five hundred thousand dollars (\$500,000) that said real property be sold under the direction of this Court, free and clear of liens and encumbrances, and that any and all liens and encumbrances thereon should be propounded before this Court, and that the proceeds from the sale of said property should stand as the substitute for the property so sold, and be held by said trustee for the benefit of those holding *bona fide* lien claims to the extent of their interests therein, as they may hereafter be established. That more can be obtained for said properties if sold in the estate of the bankrupt free and clear of liens, than if sold under trust deeds or in foreclosure.

That in the opinion and belief of said trustee, the whole of said property can be sold to good advantage, and for a fair and reasonable price, if sold either at private sale under sealed bids, or at public auction, and that notice of [6] said sale by one publication at least ten (10) days prior to said sale will be ample notice thereof.

* * * * *

28.

That unless the said persons who are beneficiaries and trustees under said deeds of trust, and who are mortgagees under said mortgages, and the various persons asserting claims and liens against said properties, are restrained by this Court from proceeding with the sale of the said real property herein de-

scribed, the estate of said bankrupt will suffer great loss, and its real property will not bring a fair or adequate price, and that an injunction is necessary herein to prevent sales under said trust deeds and said mortgages, and decrees of foreclosure upon said mortgages.

WHEREFORE, said trustee prays for an order of this Court authorizing said trustee to sell the whole of the real property herein described, free and clear of liens and encumbrances or transfers in trust, either as a whole or in such parcels as the Court may determine, and upon such notice and in such manner as the Court may judge proper, and for the best interests of the creditors, and that each of the beneficiaries and trustees and mortgagees and lien claimants hereinbefore mentioned in this petition, and all persons claiming through or under them, and their successors and assigns, and all persons claiming any lien, encumbrance or trust deed upon said property, or any part thereof, be required to propound their liens and claims before this Court, and that all *bona fide* lien claimants be remitted to the proceeds of such sale; and that said parties claiming under said deeds of trust and [7] mortgages, and said judgment liens, and under other instruments or titles, and who have been hereinbefore referred to, and each of their agents and representatives and officers, and all persons acting for them or either of them, be enjoined from taking any proceedings to sell said real property, or any part thereof, pending the final determination of this petition, and pending the sale

ordered by this Court, and that such other and further order may be made as may be meet and proper in the premises.

R. M. SIMS,

Trustee and Petitioner.

R. H. CROSS,

J. A. ELSTON,

BLACK & CLARK,

Attorneys for Trustee and Petitioner.

* * * * *

PARCEL 30.

All that lot of land situated in the City of Oakland, County of Alameda, State of California, bounded and described as follows, to wit:

BEGINNING at a point on the eastern line of Telegraph Avenue, as the same now exists, distant thereon northerly one hundred (100) feet from the point of intersection thereof with the northern line of 45th Street, formerly Linden Lane; running thence northerly along said line of Telegraph Avenue one hundred and fifty-three (153) feet, eight (8) inches, more or less, to the northern line of the land heretofore conveyed by S. E. Alden to Annie Wallace; thence along said line north 84 degrees 15 minutes east one hundred and twenty-five (125) feet; thence south 12 degrees 30 minutes west [8] parallel with Telegraph Avenue one hundred and fifty-three (153) feet, eight (8) inches to a point on said line distant one hundred (100) feet northerly from the northern line of 45th Street; and thence south

84 degrees 15 minutes west one hundred and twenty-five (125) feet to the point of beginning.

Being a portion of Plot No. 35, as per Kellersberger's Map of the Ranchos of V. & D. Peralta on file in the office of the County Recorder of Alameda County.

* * * * *

PARCEL 31.

All that lot of land situated in the City of Oakland, County of Alameda, State of California, bounded and described as follows, to wit:

BEGINNING at the point of intersection of the northern line of 45th Street, formerly called Linden Lane, with the eastern line of Telegraph Avenue, as said street and avenue now exist; running thence easterly along said line of 45th Street one hundred and twenty-five (125) feet; thence north 12 degrees 30 minutes east one hundred (100) feet; thence south 84 degrees 15 minutes west one hundred and twenty-five (125) feet to the eastern line of Telegraph Avenue; and thence southerly along said last-named line one hundred (100) feet, more or less, to the point of beginning.

Being a portion of Plot No. 35, as per Kellersberger's Map of the Ranchos of V. & D. Peralta, on file in the office of the County Recorder of Alameda County.

* * * * *

[Endorsed]: Filed Dec. 4, 1915, 11 A. M. A. B. Kreft, Referee. [9]

(Title of Court and Cause.)

Order to Show Cause (on Petition for Sale of Real Property, by Trustee).

UPON READING AND FILING the duly verified petition by R. M. Sims, trustee of the estate of the above-named bankrupt, praying for an order of sale of the real property of the estate of said bankrupt, free and clear of all liens, claims and encumbrances, and praying for an order that the persons named in said petition, be required to propound their claims of lien and other claims in and to the real property of the estate of said bankrupt in this court, and for an order enjoining sales under any of the trust deeds or mortgages or decrees mentioned in said petition, and good cause appearing therefor, it is

ORDERED, that E. G. Lohman, M. A. McAuley, E. H. Lohman, Henry Medau, Willard W. White, John H. Medau, Edward P. Highby, Mary C. Highby, C. B. Highby, M. Rinehardt, Willard W. White, Anna B. Noe, J. F. Carlston, Arthur L. Harris, Central National Bank of Oakland, J. E. Clark, Henry C. Tardey, William C. Clark, Realty Syndicate, J. E. Clark, Oakland Bank of Savings, Sophia Schmidt, Oakland Bank of Savings, Osgood Putnam, Edward W. Putnam, executors of the last will of Joseph Worcester, Helen Leonie Mignon, executrix of the last will of Abel Mignon, Joseph W. Phelps, George W. Roy and Aurelia F. Roy, trustees for Roland F. Roy, Addie T. Pinkham,

and Hattie Hardeste Chapman, be, and they hereby are, ordered, directed and required to be and appear before this Court, at the office of the Hon. A. B. Kreft, Referee in Bankruptcy, in the United States Postoffice Building, San Francisco, California, on the 10th day of December, 1915, at the hour of two o'clock P. M. of said day, then and there to show cause, if any they have, why said petition should not be granted; and then and there to propound their said claims of lien before this court; and then and there to show cause, if any they have, why all *bona fide* lien [10] claimants and others claiming title, as mentioned in said petition, should not be remitted to the proceeds of the sale of said property, in accordance with their interests therein.

IT IS FURTHER ORDERED, that in the meantime, and at the hearing on said order to show cause, said parties and all persons acting under them and for them, be restrained from making any sale of said real property, or any part thereof, and the said parties be, and they are hereby, required to show cause why, in the event said sale as prayed for in said petition is ordered, they and each of them, and all persons acting for them, or at their direction, should not be restrained, pending the making of said sale, and until the same is consummated.

IT IS FURTHER ORDERED, that service of the order to show cause may be made upon the attorneys for said parties as follows:

Upon William A. Powell, Esq., attorney for the parties mentioned in paragraph 3 of said petition.

Upon Messrs. Gehring & Wyman, attorneys for the parties interested in the trust deed mentioned in paragraph 4 of the petition.

Upon Messrs. Metcalfe & Black, attorneys for the parties mentioned in paragraph 7 of the petition.

Upon Henry G. Tardey, attorney for the parties mentioned in paragraph 8 of the petition.

Upon Messrs. Tobin & Tobin, attorneys for the Hibernia Savings and Loan Society, mentioned in paragraph 9½ of the petition.

Upon Messrs. Snook & Church, attorneys for the parties mentioned in paragraph 10 of the petition.

Upon Messrs. McKee & Tasheira, attorneys for the parties named in paragraph 11 of the petition.

Upon Sydney M. Van Wyck, attorney for the parties mentioned [11] in paragraph 12 of the petition.

Upon S. C. Wright, attorney for the parties mentioned in paragraph 13 of the petition.

Upon Frank B. Lorigan, attorney for Helen Leonie Mignon, executrix of Abel Mignon, deceased, mentioned in said petition.

Upon George F. Snyder, attorney for Joseph W. Phelps, mentioned in said petition.

Upon Louis H. Ward, attorney for Addie T. Pinkham, mentioned in said petition.

Upon S. C. Wright, attorney for George W. Roy and Aurelia F. Roy, trustees for Roland F. Roy, mentioned in said petition.

Upon Wm. Aydelotte, attorney for Hattie Hardeste Chapman, mentioned in said petition.

Service shall be made at least 3 days before the hearing.

IT IS FURTHER ORDERED, that in the making of the service of this order, a copy of the said petition shall be attached thereto, and same served on or before Dec. 7, 1915.

ARMAND B. KREFT,
Referee in Bankruptcy.

Dated December 4th, 1915.

[Endorsed]: Filed Dec. 4, 1915, 11:15 A. M. A. B. Kreft, Referee.

[Endorsed]: No. 9510. In the Southern Division of the United States District Court, for the Northern District of California, First Division. In the Matter of the Realty Union, a Corporation, Bankrupt. Papers Transmitted with Referee's Certificate on Petition to Review Order Disallowing Claim of Hattie Hardesty Chapman. Filed at 3 o'clock P. M. Jun. 27, 1917. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [12]

(Title of Court and Cause.)

**Answer of Hattie Hardesty Chapman to Petition of
R. M. Sims, Trustee, for Order of Sale and Order
to Show Cause Issued Thereon.**

Comes now Hattie Hardesty Chapman and for answer to the petition of R. M. Sims, trustee, for order of sale and the order to show cause issued thereon, and alleges as follows, to wit:

I.

That said Hattie Hardesty Chapman, hereinafter referred to as claimant, was, by order of the referee in said matter and by consent of counsel for said trustee, granted to and including the 15th day of December, 1915, at one o'clock P. M. to answer said petition for order of sale and said order to show cause.

II.

That said claimant has no information or belief relative to the alleged facts set forth in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25 (except subdivision E and except subdivisions H-1 and H-2 thereof) and 27 of said petition.

III.

Answering paragraph 7 thereof of said petition, claimant avers that early in the year 1912 she was approached by representatives of The Realty Union, said bankrupt, with a view to inducing her to convey to said Realty Union, the following-described property, to wit:

“All that certain property situate on the northeast corner of Telegraph Avenue and 45th Street, sometimes called Linden Lane, in the City of Oakland, County of Alameda, State of California, having a frontage of about 253.66 feet on Telegraph Avenue by 125 feet on 45th Street, sometimes called Linden Lane. Said property being a portion of Plot Numbered Thirty-five (35) as laid down and

so designated on Kellersberger's Map of V. & D. Peralta Ranchos on file in the office of the County Recorder of said Alameda County."

That as a result of said business she conveyed to [13] said Realty Union said real estate and received therefor the sum of \$729.36, together with the two promissory notes, or certificates, hereinafter referred to; that as a part of said transaction said claimant was requested to convey a portion of said above-described real estate being parcel No. 30 referred to in said petition, to Caro Mills, and a portion of said real estate described in said petition as parcel No. 31 to Roosevelt Johnson for said Realty Union, said Bankrupt.

IV.

That on, to wit, the 11th day of May, 1915, said claimant filed her certain action in the Superior Court of the State of California, in and for the County of Alameda, praying among other things that it be declared and adjudged by said named Superior Court that claimant has a lien as vendor upon said hereinbefore described real estate for the payment of said purchase money and for such other relief as may be agreeable to equity, a copy of which said complaint is attached hereto and is hereby referred to and made a part hereof, together with the promissory notes or certificates attached to said complaint and marked Exhibit 1; that at the time of filing said complaint said claimant caused to be filed a notice of *lis pendens* and the same was recorded on said 11th day of May, 1915, at 4:30 o'clock

P. M. of said day in the office of the County Recorder of said County of Alameda; that a copy of said notice of *lis pendens* is attached hereto and is hereby referred to and made a part hereof and marked Exhibit 2.

V.

Answering paragraph 24 of said petition claimant denies that it is averred in said complaint filed by her in said Superior Court that parcel 31 and other lands were exchanged for an investment certificate about one year prior to the commencement of the suit, but in that regard alleges that the facts are fully set forth in said complaint, a copy of which, together with the [14] promissory notes thereto attached, and the *lis pendens* notice are hereto attached and heretofore referred to. Claimant denies that said action is without merit in view of the fact that investment certificates were taken in exchange which certificates contained many provisions other than promises to pay money or in view of or by reason of any other facts alleged or not alleged in said petition, and in this regard claimant alleges that her action is well founded in point of fact and law and equity and that she has a valid and subsisting vendor's lien on said parcels 30 and 31 in said petition described, which is the same identical property as described in her complaint and in said *lis pendens* notice.

VI.

Answering subdivision E of paragraph 25 of said petition claimant avers that it is not true that there are no other valid liens against said property therein

described as parcel 30 but this claimant alleges the fact to be that she has a good and valid vendor's lien covering said parcel 30; that said parcels 30 and 31 are subject to the claims of claimant.

VII.

Answering subdivisions H-1 and H-2 of paragraph 25, claimant avers that if said Hibernia Savings and Loan Society has brought suit to foreclose said mortgage in said paragraph H-1 referred to that no service has been made upon her of said foreclosure papers, and that if she has been made a party to said suit she is not aware of the fact.

VIII.

Answering paragraph 26, claimant alleges that she has no information or belief relative to the values of the properties in said petition described except in reference to parcels 30 and 31; that in this regard said claimant alleges that said property was bought from her upon the following basis, to wit: [15]

Parcel 30, on the basis of \$125.00 per running foot on Telegraph Avenue, being 153 feet or approximately \$19,125.00; and parcel 31, on the basis of \$160.00 per running foot on Telegraph Avenue being 100 feet or a total of \$16,000.00, making a total of about \$35,125.00 and that after the payment of the encumbrances then existing against said property she received as aforesaid the sum of \$729.36 in cash and the two promissory notes aggregating \$19,000.00; that claimant is informed and believes that it will be for the best interests of the estate of said bankrupt that said property be sold subject to her lien, and that the estate of said bankrupt would have

the full year of redemption within which to redeem said property should there be any excess in value over and above the payment of the mortgages now on said property together with the amount due her on her said lien; that in the opinion and belief of said claimant said property cannot now be sold to good advantage nor for a fair or a reasonable price if sold either at private sale under sealed bids or at public auction for the reason that there now exists a general depression in the value of said real estate.

IX.

Said claimant denies that unless the various persons asserting claims and liens against said property are restrained by said Court from proceeding with the sale of said real property herein described the estate of said bankrupt will suffer great loss or any loss or that its real property will not bring a fair or adequate price or that it is necessary for any reason for an injunction to issue herein to prevent sales under said liens.

WHEREFORE said claimant prays that said petition and said order to show cause issued thereunder be as to her dismissed and that she may have such other and further relief as may be meet and proper in the premises.

WM. M. AYDELOTTE,
Attorney for Said Claimant, Hattie Hardesty Chapman.

(Duly verified.) [16]

**Exhibit 1 to Answer—Complaint, Chapman v.
Realty Union, in Superior Court.**

EXHIBIT 1.

*In the Superior Court of the State of California, in
and for the County of Alameda.*

#45,939—Dept. 2.

HATTIE HARDESTY CHAPMAN,
Plaintiff,

vs.

THE REALTY UNION, a Corporation,
Defendant.

COMPLAINT.

Plaintiff complains and alleges:

I.

That defendant is a corporation organized and existing under and by virtue of the laws of the State of California and having its principal place of business in the City and County of San Francisco, State of California.

II.

That on, to wit, the 6th day of June, 1912, plaintiff was the owner of the property situate on the northeast corner of Telegraph Avenue and 45th Street, sometimes called Linden Lane, in the City of Oakland, County of Alameda, State of California, having a frontage of about 253.66 feet on Telegraph Avenue by 125 feet on 45th Street, sometimes called Linden Lane. That said property was, and is, unimproved.

III.

That on, to wit, said 6th day of June, 1912, said plaintiff sold and conveyed to said defendant said above-described real estate for which said defendant agreed to pay plaintiff the sum of \$19,729.36, and in evidence thereof paid plaintiff the sum of \$729.36 and gave to plaintiff its promissory notes, one for \$10,000.00 and one for \$9,000.00, copies of which said promissory notes are hereto annexed and made a part hereof marked Exhibits [17] "A" and "B," respectively.

IV.

That said defendant has paid the interest on said above-described promissory notes to and including the 6th day of March, 1915; that no other payments on said indebtedness have been made by said defendant to said plaintiff in any amount, or in any manner, or otherwise, or at all, and that said sum of \$19,000.00, together with interest from the 6th day of March, 1915, is unpaid, and by reason of the facts herein alleged said plaintiff elects to declare the whole of said sum of \$19,000.00, together with said interest to be due and payable.

V.

That plaintiff is informed and believes and therefore alleges that said defendant is insolvent and unable to meet its obligations; that the assets of said defendant consist wholly of unimproved real estate in the cities of Oakland and Berkeley in said county and State; that the business of defendant is being conducted at a great and continual loss and its affairs are in such a condition that its assets are

being dissipated, and that the mangement of the business affairs and prudential concerns of said defendant is grossly wasteful, inefficient and expensive.

VI.

That plaintiff has a lien as vendor upon said premises for the payment of said purchase money and of the whole thereof including interest which she claims in this action.

VII.

That plaintiff is informed and believes and therefore alleges that defendant has threatened and intends to sell and dispose of the herein described property and to apply the proceeds of any sale thereof to the liquidation of other obligations of said defendant to the exclusion and nonpayment of the purchase money indebtedness, as evidenced by said promissory notes herein described, to plaintiff. [18]

VIII.

That plaintiff is informed and believes and therefore alleges that defendant is indebted to divers, persons, firms and corporations in a large amount of money, to wit, over \$1,000,000.00, and that unless and without the equitable intervention of this Honorable Court and a granting of the relief herein prayed for, said plaintiff will suffer great and irreparable loss and damage.

IX.

That plaintiff has no adequate remedy at law and is remediless save through the equitable intervention of this Court.

X.

That it is necessary and desirable for the proper protection of plaintiff and her rights in the premises that a receiver be appointed to take charge of and administer the above-described property, or in event it is deemed necessary by said Honorable Court, the whole of the assets of said defendant to prevent plaintiff from suffering any loss and to fully protect her rights in the premises.

WHEREFORE, plaintiff demands judgment against defendant as follows:

1. That plaintiff do have and recover against defendant judgment in the sum of \$19,000.00, together with interest thereon from the 6th day of March, 1915, to the date of the entry of decree herein at the rate of six per cent per annum.

2. That during the pendency of this action if it appear necessary to the Court so to do, that, on application of said plaintiff a receiver may be appointed by said Court to take and keep possession of said herein-described premises and to do such other acts respecting said property as may be authorized by said Court.

3. That it be declared and adjudged by said Court that plaintiff has a lien as vendor upon said premises for the payment of said purchase money. [19]

4. That in case said defendant shall not pay said judgment and/or discharge said lien that said premises may be sold and so much of the proceeds as may be necessary be applied to the payment of the judgment so rendered.

5. That said plaintiff have such other, further

and additional relief and judgment as may be desired by her and as may be agreeable to equity.

6. That said plaintiff recover of and from said defendant her costs and disbursements herein laid out and expended.

HATTIE HARDESTY CHAPMAN,
Plaintiff.

WM. M. AYDELOTTE,
Attorney for Plaintiff.

State of California,
County of Alameda,—ss.

Hattie Hardesty Chapman, the above-named plaintiff, being duly sworn, says as follows: That she has read the foregoing complaint and knows the contents thereof; that the same is true of her own knowledge, except as to those matters which are herein stated on information and belief, and as to those matters she believes it to be true.

HATTIE HARDESTY CHAPMAN.

Subscribed and sworn to before me this 10th day of May, 1915.

[Seal] HENRY SCHNEIDER,
Notary Public in and for the County of Alameda,
State of California. [20]

EXHIBIT "A."

E.

No. 10219

\$10000

Investment Certificate

Issued by

THE REALTY UNION.

Incorporated 1910, Under the Laws of California.

Ten years after date, THE REALTY UNION promises to pay to HATTIE HARDESTY CHAPMAN OF ALAMEDA, CALIFORNIA, TEN THOUSAND DOLLARS with interest at the rate of six per cent per annum, payable monthly, and whenever dividends paid its Capital Stockholders exceed six per cent per annum, the rate of interest paid hereon for the same periods shall be increased to equal the rate of said dividends.

6%

GOLD.

6%

This Certificate is transferable only upon endorsement and surrender. Any owner of Investment Certificates of a paid-up value of not less than \$100.00 may exchange them for unimproved realty held for sale by the Corporation.

IN WITNESS WHEREOF, The Realty Union has caused this Certificate to be signed by its President or Vice-President and by its Secretary and countersigned by its Auditor at its office in the City and

County of San Francisco, State of California, this
Sixth day of June, 1912.

ROOSEVELT JOHNSON,

Vice-President.

(Corporate Seal)

JESSE B. FULLER,

Secretary.

Countersigned by

G. W. FANNING,

Auditor.

UNITED STATES OF AMERICA. [21]

EXHIBIT "B."

E.

No. 10220

\$9000

Investment Certificate

Issued by

THE REALTY UNION.

Incorporated 1910, Under the Laws of California.

Ten years after date, THE REALTY UNION promises to pay to HATTIE HARDESTY CHAPMAN OF ALAMEDA, CALIFORNIA, NINE THOUSAND DOLLARS with interest at the rate of six per cent per annum, payable monthly, and whenever dividends paid its Capital Stockholders exceed six per cent per annum, the rate of interest paid hereon for the same periods shall be increased to equal the rate of said dividends.

6%

GOLD.

6%

This Certificate is transferable only upon endorsement and surrender. Any owner of Investment Certificates of a paid-up value of not less than \$100.00

may exchange them for unimproved realty held for sale by the Corporation.

IN WITNESS WHEREOF, The Realty Union has caused this Certificate to be signed by its President or Vice-President and by its Secretary and countersigned by its Auditor at its office in the City and County of San Francisco, State of California, this Sixth day of June, 1912.

ROOSEVELT JOHNSON,
Vice-President.

(Corporate Seal)

JESSE B. FULLER,
Secretary.

Countersigned by

G. W. FANNING,
Auditor.

UNITED STATES OF AMERICA. [22]

**Exhibit 2 to Answer—Notice of Lis Pendens,
Chapman v. The Realty Union in Superior
Court.**

EXHIBIT 2.

*In the Superior Court of the State of California, in
and for the County of Alameda.*

HATTIE HARDESTY CHAPMAN,
Plaintiff,

vs.

THE REALTY UNION, a Corporation,
Defendant.

NOTICE OF LIS PENDENS.

Notice is hereby given that an action has been commenced in the Superior Court of the State of

California, in and for the County of Alameda, by the above-named plaintiff against the above-named defendant to obtain, among other things, a judgment that plaintiff has a lien as vendor upon the premises hereinafter described for the payment of purchase money which she claims in said action, and for other relief; and that the premises affected by this suit are situate in the City of Oakland, County of Alameda, State of California, and are bounded and described as follows, to wit:

All that certain property situate on the northeast corner of Telegraph Avenue and 45th Street, sometimes called Linden Lane, in the City of Oakland, County of Alameda, State of California, having a frontage of about 253.66 feet on Telegraph Avenue by 125 feet on 45th Street, sometimes called Linden Lane. Said property being a portion of Plot Numbered Thirty-five (35) as laid down and so designated on Kellersberger's Map of V. & D. Peralta Ranchos on file in the office of the County Recorder of said Alameda County.

WM. M. AYDELOTTE,
Attorney for Plaintiff.

Dated May 10th, 1915.

Recorded May 11th, 1915, at 4:30 P. M.

Received a copy of the within answer this 15th day of December, 1915.

R. H. CROSS,
Attorney for said Trustee.

[Endorsed]: Filed Dec. 15, 1915, 2 P. M. A. B. Kreft, Referee. [23]

(Title of Court and Cause.)

Stipulation Re Filing of Answer.

IT IS STIPULATED that the answer hereto attached may be filed by the defendant trustee in the above-entitled matter, reserving all objections and rights, and objections to materiality of the matters pleaded in said amended answer.

Dated, August 21, 1916.

WM. M. AYDELOTTE,
Attorney for Hattie Hardesty Chapman. [24]

(Title of Court and Cause.)

Answer of R. M. Sims, Trustee of the Estate of The Realty Union, a Corporation, Bankrupt.

COMES NOW R. M. SIMS, trustee of the estate of The Realty Union, a corporation, bankrupt, and as defendant answering the complaint on file herein of Hattie Hardesty Chapman, admits, alleges and denies, as follows:

1. The petition to have the said The Realty Union, a corporation, adjudicated a bankrupt, was duly filed in this court, August 9, 1915; that after due proceedings had upon the said petition this Court duly gave and made its order on the 11th day of September, 1915, adjudicating the said The Realty Union, a corporation, bankrupt, and that thereafter upon the proceedings had for the said purpose, this Court duly gave and made its order on October 15, 1915, appointing this defendant, R. M. Sims, trus-

tee of said The Realty Union, a corporation, bankrupt; whereupon this defendant forthwith duly qualified as such trustee, and that since said last-named date he has been and now is the duly appointed, qualified and acting trustee of said The Realty Union, a corporation, bankrupt. That as such trustee, he is vested with all of the rights and properties of said The Realty Union, a corporation, and that he duly succeeded to all of the property referred to in the plaintiff's complaint. That said complaint has been presented to this Court, and is on file herein, and the plaintiff is hereby answering said complaint, in accordance with the understanding of the parties, in order that the validity of plaintiff's claims may be determined.

2. Defendant admits the allegations of paragraphs I and II. Defendant admits that on June 6, 1912, the plaintiff transferred to The Realty Union, a corporation, the real property herein involved, and particularly described in paragraph II of the complaint, but the defendant denies that the said The Realty [25] Union, a corporation, agreed to pay plaintiff for said property the sum of nineteen thousand seven hundred twenty-nine and 36/100 dollars (\$19,729.36). The defendant alleges there was no agreement between said plaintiff and said The Realty Union, a corporation, whereby the said corporation promised to pay the said plaintiff said sum in cash, or to pay said or any sum in promissory notes in the principal sums of ten thousand dollars (\$10,000) and nine thousand dollars (\$9,000),

or in any other principal sum or sums, and the defendant denies that Exhibits "A" and "B" of the complaint constitute promissory notes; that it is true that at the time mentioned in the complaint the plaintiff agreed to transfer and did transfer the real property referred to in the complaint to the said corporation. That the consideration for such transfer was in part at least the two investment certificates, copies of which are attached to the complaint; that in part consideration for said real property so transferred to said corporation, said investment certificates were duly executed, issued, delivered to and received by the said plaintiff and that ever since the date of the execution, issuance, delivery and receipt thereof the same have been held by the said Hattie Hardesty Chapman, and that she has never surrendered or offered to surrender the same. That in said certificates it was stipulated that interest would be paid by said corporation on the principal sums therein referred to, at the rate of six per cent (6%) per annum, and that whenever the dividends paid upon the capital stock of the said corporation exceeded six per cent (6%) per annum, the rate of interest to be paid upon the principal sum mentioned in said certificate should for the same period be increased to equal the rate of the dividends.

That it was further provided in said investment certificate that the owner thereof might exchange the same for unimproved realty held for sale by said corporation, providing said certificate had a paid-up value of not less than \$100; that from the time said

certificates [26] were so issued and received, the same had and each of them had a paid-up value of more than \$100.

That at the time of and for a long period following the issuance and receipt of said certificates, said corporation held for sale large quantities of unimproved land of great value, and that during any of the times said unimproved lands were so held, the owner of the said certificates could, at his option, and in accordance with the terms thereof, have exchanged the same for portions of said lands equal in value to the face of said certificates; that said The Realty Union, a corporation, was, at the times when said certificates were issued, dealing in land for the purpose of profit to its shareholders and the holders of investment certificates which had been issued to many persons, and which said certificates were of the same character and conditions as the certificates issued to said plaintiff, Hattie Hardesty Chapman; that said corporation, in addition to the certificates so issued to said plaintiff, had regularly issued and there was outstanding and owned by other persons at the time of and for a long period following the time of the issuance of said certificates, other certificates in the same form and containing the same provisions for the participation of the certificate holder in the profits of the said corporation, and for the exchange of the certificate for real property belonging to said corporation; that the assets of said corporation, at the times said certificates were issued, consisted of large quantities of un-

improved land and *and* some improved land, purchased for the purpose of holding the same for a rise in values, and for a profit for the benefit of certificate holders who had received their certificates under the same circumstances and conditions as was received the said certificates so issued to the said plaintiff. That in case said lands were unimproved, they could be exchanged for certificates at the option of the certificate holders. That the lands aforesaid were of the value of two hundred thousand [27] dollars (\$200,000) and upwards, and that the persons, including the plaintiff, who accepted said certificates issued by said corporation, accepted them with the full understanding that all liens of every nature and kind upon real property transferred in exchange for such certificates were absolutely waived; that the said plaintiff fully understood in accepting the certificates attached to the complaint that she waived any and all lien in the nature of a vendor's lien, if any such lien she ever had; that the said plaintiff in transferring said lands to said corporation, and in receiving the said investment certificates, fully understood, and it was impliedly agreed in and as a part of the transaction, that she was accepting said investment certificates for said lands, and that such investment certificates, and whatsoever liens she received upon the transfer of said lands, were a complete, entire and full satisfaction and extinguishment of any and all obligation from said corporation to the said plaintiff; that it was impliedly agreed in said transaction that all

claim of every nature and kind which the said plaintiff had against said land was waived and forever transferred to said corporation. That said transfer was not a transfer upon credit, but that such transfer was made for said investment certificates, and that the privileges and considerations contained in said investment certificates, in addition to the promises therein contained to pay stated sums of money, were of great value to the said plaintiff, or to any person who might own said investment certificates, and that said transaction did not constitute a transfer for a mere promise to pay, as set forth in the plaintiff's complaint.

That it is further provided in said certificates that the principal sums agreed to be paid will be paid ten years after date, and that it was fully understood and agreed in and as a part of the said transaction, that the principal sums agreed to be paid in said certificates would be payable ten years after date. That there are no sums due, owing or unpaid to the plaintiff on account [28] of said investment certificates other than the interest agreed to be paid therein, and which may be unpaid.

3. Defendant denies that the plaintiff has a lien as a vendor upon said premises described in the complaint for the payment of the sums mentioned in the complaint, or any thereof. Defendant denies that there was any threat to sell the real property described in the complaint.

4. Defendant is unable to specify the exact amount of indebtedness owing by said corporation, but admits that the amount of said indebtedness is

large, as is shown by the records and files in this cause.

5. Defendant denies that plaintiff has no adequate remedy at law. Defendant alleges that the only remedy which the plaintiff does have is the right to present her claim herein.

WHEREFORE, plaintiff prays that defendant take nothing, or such other order as may be proper.

Attorneys for Defendant.

(Duly verified.)

[Endorsed]: Filed Mch. 22, 1916, 10 A. M. A. B. Kreft, Referee. [29]

(Title of Court and Cause.)

Amendment to Answer (of R. M. Sims, Trustee).

COMES NOW R. M. SIMS, trustee of the estate of The Realty Union, a corporation, bankrupt, and by leave of the Court first had and obtained, amends his answer herein, and by way of amendment thereto alleges:

1. That on February 23, 1912, and prior to any negotiations between Hattie Hardesty Chapman and said corporation, The Realty Union, the real property mentioned in the complaint was owned as follows:

That the parcel commencing at the northeastern corner of Telegraph Avenue and 45th Street; thence northerly along Telegraph Avenue 200 feet; easterly parallel with 45th Street 100 feet; thence northerly parallel with Telegraph Avenue 53 feet 8 inches more

or less to the northern line of land of Alden to Wallace, easterly parallel with 45th Street 25 feet; thence southerly, parallel with Telegraph Avenue 253 feet 8 inches more or less to 45th Street; and thence westerly thereon 125 feet to commencement, was on February 23, 1912, vested in Hattie Hardesty Chapman, a single woman, of the City of Alameda, California.

The parcel commencing on the eastern line of Telegraph Avenue, 200 feet northerly from 45th Street; thence northerly along Telegraph Avenue 53 feet 8 inches more or less to the north *line land* of Alden to Wallace by easterly 100 feet, parallel with 45th Street, vested in William Carlton Wallace, of the City of Oakland, California, and the remainder thereof was on February 23, 1912, vested in Margaret Annie Wallace (*a feme sole*), of the City of Oakland, California.

2. That the whole of said premises are on said February 23, 1912, subject to encumbrances as follows:

(a) Mortgage: William Carlton Wallace, a single man, [30] to Farmers & Merchants' Savings Bank of Oakland, California, a corporation, dated December 1, 1905, and recorded December 4th, 1905, in Liber 732 of Mortgages, page 348, made to secure the payment of sixty-five hundred dollars (\$6500) in three years after date, with interest, according to the terms of a certain promissory note of even date therewith, and also as security for further advances, excepting that said mortgage did not at said time cover the northerly portion of said tract fronting 153.8 on Telegraph Avenue, and extending easterly 125 feet, and of a uniform depth.

(b) Mortgage: William Carlton Wallace (single man) to E. J. Dinkelspiel, dated September 28, 1906, and recorded September 29, 1906, in Liber 770 of Mortgages, page 113, made to secure the payment of one thousand dollars (\$1,000), one year after date, with interest according to the terms of a certain promissory note of even date therewith, and also as security for further advances, excepting that said mortgage at said time covered only part of the entire tract which the mortgage mentioned in the preceding subdivision (a) covered at said time.

(c) Deed of Trust: William Carlton Wallace, a single man, to Wm. M. Gardiner, and A. K. Munson, dated July 1, 1909, and recorded July 2, 1909, in Liber 1612 of Deeds, page 168, records of Alameda County, California, made to secure the payment of six thousand dollars (\$6,000), unto Serena N. Gardiner, with interest, according to the terms of a certain promissory note of even date therewith, and also as security for further advances, covering that part of entire tract as follows: Lot on east line of Telegraph Avenue 100 feet northerly from 45th St.; northerly along Telegraph Avenue 153 feet 8 inches by 125 feet easterly.

(d) Mortgage: William Carlton Wallace, a single man, to Leander R. Webster, dated September 3, 1909, and recorded October 16, 1909, in Liber 904 of Mortgages, page 169, made to secure [31] the payment of one thousand dollars (\$1,000) on September 23, 1910, with interest, according to the terms of a certain promissory note of even date therewith,

and also as security for further advances. Covered lot on east line of Telegraph Avenue 100 feet northerly from 45th Street; thence easterly 125 feet by 153 feet 8 inches northerly.

(e) Writ of Attachment: Issued out of the Superior Court of the County of Alameda, State of California, wherein Ransom-Crummey Company, a corporation, is plaintiff, and William C. Wallace is defendant, recorded November 1, 1910, in Liber 28 of Attachments, page 329, to recover the sum of \$325.00 besides costs, etc. Levy made on said date by sheriff of Alameda County on all the right, title, claim and interest of defendant, of, in and to lot at the northeastern corner of Telegraph Avenue and 45th Street, easterly on 45th Street 125 feet by 253 feet 5 inches northerly, parallel with Telegraph Avenue.

In the above-entitled action in the said Superior Court, Case No. 33,995, judgment was entered against said William C. Wallace on January 15, 1912, for the sum of \$392.95, in Volume 91 of Judgments, page 583.

(f) Mortgage: Hattie Hardesty Chapman, a single woman, to E. J. Dinkelspiel, dated September 26, 1911, and recorded September 27, 1911, in Liber 969 of Mortgages, page 475, made to secure the payment of nine hundred and seven and 89/100 dollars (\$907.89) in one day after date, with interest at the rate of eight per cent per annum, according to the terms of a certain promissory note of even date therewith, and also as security for further advances. Covered lot at the northeastern corner of Telegraph

Avenue and 45th Street, northerly along Telegraph Avenue 100 feet by 125 feet easterly on 45th Street.

3. On February 28, 1912, William Carlton Wallace and Hattie Hardesty Chapman, conveyed by grant, bargain and sale deed, [32] said deed duly recorded in Liber 2059 of Deeds, page 44, records of the Recorder's Office, Alameda County, all of that part of the real property hereinbefore mentioned, standing in their names or in the name of either of them, unto Caro Mills, and being described as follows:

“Beginning at a point on the eastern line of Telegraph Avenue, as the same now exists, distant thereon northerly one hundred (100) feet from the point of intersection thereof with the northern line of 45th Street (formerly Linden Lane); running thence northerly along said line of Telegraph Avenue one hundred and fifty-three (153) feet, eight (8) inches, more or less, to the northern line of the land heretofore conveyed by S. E. Alden to Annie Wallace; thence along said line north $84^{\circ} 15'$ east one hundred and twenty-five (125) feet; thence south $12^{\circ} 30'$ west parallel with Telegraph Avenue one hundred and fifty-three (153) feet, eight (8) inches to a point on said line distant one hundred (100) feet northerly from the northern line of 45th Street; and thence south $84^{\circ} 15'$ west one hundred and twenty-five (125) feet to the point of beginning.

Being a portion of Plot No. 35, as said plot is delineated and so designated upon Kellersberger's Map of the Ranchos of V. & D. Peralta, on file in the office

of the County Recorder of the said County of Alameda.”

4. That thereafter on March 8, 1912, Bradford Webster, special administrator of the estate of Leander R. Webster, deceased, executed a release of the mortgage hereinbefore mentioned, which had been made to Leander R. Webster, said release being duly recorded on said date in Liber 1005 of Mortgages, page 425, records of the County Recorder's Office of Alameda County.

5. That on March 18, 1912, William M. Gardiner and A. M. Munson reconveyed the property which they had received as trustees for Serena N. Gardiner, as hereinbefore mentioned, by deed dated March 18, 1912, and duly recorded on same date in Liber 2055 of Deeds, page 305, records of the Recorder's Office of Alameda County.

6. That on April 12, 1912, said Caro Mills executed a deed of trust, duly recorded on same date in Liber 2021 of Deeds, page 389, records of Alameda County Recorder's Office, to Charles T. Rodolph and A. E. H. Cramer, as trustees, to secure the payment to the Union Savings Bank, a corporation, of the sum of five thousand [33] dollars (\$5,000) represented by a promissory note made to said Union Savings Bank by the said Caro Mills. That said deed of trust covered all of the property which had been conveyed by William Carlton Wallace and Hattie Hardesty Chapman unto Caro Mills, as hereinbefore set forth.

7. That on May 14, 1912, E. J. Dinkelspiel executed a release of the mortgage by release recorded

on said date in Book 1016 of Mortgages at page 265, records of the Recorder's Office of Alameda County. Said release released the mortgage recorded in Book 969 of Mortgages, page 475, same records.

8. That on June 8, 1912, said E. J. Dinkelspiel executed a release of mortgage by release duly recorded on said date in Book 1009 of Mortgages, at page 392, records of the Recorder's Office of Alameda County. Said release released the mortgage hereinbefore mentioned recorded in Book 770 of Mortgages, at page 113.

9. That on May 29, 1912, said Caro Mills, by a grant, bargain and sale deed, duly recorded on June 12, 1912, in Book 2067 of Deeds, page 266, same records; that said deed conveyed to The Realty Union, a corporation, the real property hereinbefore mentioned as having been conveyed to said Caro Mills.

10. That on May 28, 1912, by a grant, bargain and sale deed, recorded on June 12, 1912, in Book 2070 of Deeds, at page 258, records of the Recorder's Office of Alameda County, Hattie Hardesty Chapman conveyed to Roosevelt Johnson all that certain real property described as follows:

"All of those lots of land situated in the City of Oakland, County of Alameda, State of California, bounded and described as follows, to wit:

Beginning at the point of intersection of the eastern line of Telegraph Avenue with the northern line of 45th Street (formerly Linden Lane) as said avenue and street [34] now exist; running thence easterly along said line of 45th Street one hundred

and twenty-five (125) feet; thence north $12^{\circ} 30'$ east one hundred (100) feet; thence south $84^{\circ} 15'$ west one hundred and twenty-five (125) feet to the eastern line of Telegraph Avenue; thence southerly along said line of Telegraph Avenue one hundred (100) feet, more or less, to the point of beginning.

Being a portion of Plot No. 35, as said plot is delineated and so designated upon Kellersberger's Map of V. & D. Peralta Ranchos, on file in the office of the County Recorder of the said County of Alameda."

11. That on June 29, 1912, said Roosevelt Johnson and wife, by a deed of conveyance recorded July 15, 1912, transferred to The Realty Union, all of the property which as hereinbefore mentioned, was conveyed to the said Roosevelt Johnson. The deed was recorded July 15, 1912, in Book 2092 of Deeds, page 45, same records.

12. That the facts hereinbefore set forth show the transactions relating to the title to the property involved in the complaint from a time prior to the negotiations between The Realty Union, a corporation, and Hattie Hardesty Chapman, which resulted in the making of any deeds by the said Hattie Hardesty Chapman, covering property, that went eventually to the said corporation, and that it was only by the conveyances hereinbefore mentioned that the real property mentioned in the complaint was transferred to said corporation, The Realty Union, and that as to the portion of the said real property hereinbefore particularly specified the same was not transferred by the said Hattie Hardesty Chapman to the said

Realty Union, a corporation, or to any of its agents or officers.

13. The defendant further alleges that subsequent to the time when the said The Realty Union, a corporation, succeeded to said real property, it did with the full acquiescence of the said Hattie Hardesty Chapman, convey and mortgage, subject to the trust deeds, the said real property, without any protest having been made by the said Hattie Hardesty Chapman, and that the transaction [35] last mentioned continued from the time the said The Realty Union, a corporation, received the said real property down to the month of September, 1914.

14. Defendant further alleges that the said Hattie Hardesty Chapman is estopped from claiming that she has any vendor's lien upon any of the property mentioned in the complaint; that said Hattie Hardesty Chapman fully understood that said The Realty Union, a corporation, had, prior to the time of any negotiations between the said Hattie Hardesty Chapman and said corporation, been engaged in issuing and was at said time engaged in issuing, and would therefore be engaged in issuing investment certificates issued to the said Hattie Hardesty Chapman, upon the faith of all the investment certificate holders of a right to exchange such investment certificates for the unimproved real property of said corporation held for sale; that without any demand, notice or protest from the said Hattie Hardesty Chapman, the said The Realty Union, a corporation, subsequent to the time of the issuance of the investment certificate mentioned in the complaint of the

said Hattie Hardesty Chapman, issued investment certificates in the same form as those which had been issued to Hattie Hardesty Chapman, aggregating several hundred thousands of dollars in amount; that as the said Hattie Hardesty Chapman well knew the said investment certificates were purchased by innocent purchasers, and for value, who fully believed that their rights were equal to the rights of other investment certificate holders, and who fully believed that they were acquiring by such investment certificates a right to exchange the same for the unimproved real property of said The Realty Union, a corporation, that might be held for sale, including all the property thereof, and including the property mentioned in the complaint; that as the said Hattie Hardesty Chapman at all times well knew it was a part of the plan and arrangement whereby said investment certificates were issued, that no investment certificate holder had rights over or superior to those of [36] another investment certificate holder; that each certificate holder made an investment by acquiring certificates whereby no right or preference over another certificate holder could be had, or gained, but that all the investment certificate holders were equally concerned and shared the same risks, duties and privileges. That it would be grossly inequitable and grossly unjust to the investment certificate holders of the said The Realty Union, a corporation, to allow the said Hattie Hardesty Chapman, after having speculated upon the rights conveyed by her investment certificates, to recover and retake the land, the title to which was vested in the said, The

Realty Union, a corporation, as hereinbefore averred; that the said investment certificate holders hereinbefore mentioned are the same as those investment certificate holders who have presented their claims in bankruptcy in this proceeding, and the defendant hereby refers to the records and files in this cause for the purpose of making the same a part of this pleading, and for the purpose of showing the number and amounts of the investment certificates of the said The Realty Union, a corporation, outstanding, which were issued prior to and subsequent to the date on which the investment certificates in question received and held by the said Hattie Hardesty Chapman, were issued.

WHEREFORE, plaintiff renews the prayer of his original answer, and asks that the said plaintiff take nothing.

R. H. CROSS,
J. A. ELSTON,
BLACK & CLARK,

Attorneys for R. M. Sims, Trustee in Bankruptcy.

(Duly verified.)

[Endorsed]: Filed Aug. 25, 1916, at 1 o'clock and 30 min. P. M. A. B. Kreft, Referee in Bankruptcy.

[37]

(Title of Court and Cause, and Number.)

(Testimony Taken Before Referee, Armand B. Kreft.)

Claim of Hattie Hardesty Chapman.

Wednesday, March 29, 1916, 2 P. M.

ARMAND B. KREFT, Referee in Bankruptcy;
Presiding.

APPEARANCES:

WM. M. AYDELOTTE, Esq., Attorney for Claimant.

GEORGE CLARK, Esq., and A. H. BRANDT, Esq.,
Attorneys for Trustee.

Mr. CLARK.—As I understand, it was stipulated in this matter that the plaintiff's complaint filed in this court should constitute plaintiff's complaint in these proceedings; that is, should be considered as a pleading in these proceedings, and that we should file an answer to that complaint in this proceeding, and that the Court should thereupon proceed to determine the question of vendor's lien which is referred to in the complaint, and that this Court should take jurisdiction in the matter and determine that point. That was your Honor's understanding?

The REFEREE.—That is correct.

Mr. AYDELOTTE.—Subject, of course, to the fact that plaintiff waives no rights by virtue of this transfer, but merely submits the matter to this Court for decision under the same rights she would have in the State court. [38]

**Testimony of Hattie Hardesty Chapman, for
Claimant.**

Testimony of HATTIE HARDESTY CHAPMAN,
called for claimant, sworn.

Mr. AYDELOTTE.—It is admitted, if your Honor please, that the defendant is a corporation, and that on the 6th day of July, 1912, the plaintiff was the owner of this property; and it is also admitted that the plaintiff conveyed this property to the defendant.

Q. I will ask you, Miss Chapman, to state what was the agreed price, if any, that you were to receive for this property?

A. Well, they agreed to pay me \$160 a foot for the first 100 feet and \$125 a foot for the next 153 feet, and then they were to pay me that at the end of ten years, \$19,000, with interest at six per cent; and then there was a few hundred dollars that they paid me in cash.

Q. I ask you whether or not that property was encumbered at that time, Miss Chapman.

A. Yes, it was mortgaged, and they agreed to pay off the mortgage.

Q. I hand you a letter, Miss Chapman, and ask you when you received that letter.

A. I received this in June.

Q. 1912? A. Yes, 1912.

Mr. AYDELOTTE.—I desire to offer in evidence this letter and to read it in evidence. I will furnish counsel with a copy of it if he desires, and I would like to withdraw it. I would like to have this letter

(Testimony of Hattie Hardesty Chapman.)
marked for identification and would like to read it
into the record and withdraw it.

Mr. CLARK.—No objection.

(Marked: "Petition of Hattie Hardesty Chapman.
Petitioner's Exhibit No. 1 for Identification.")

Mr. AYDELOTTE.—This letter is as follows: It is
on the letterhead of The Realty Union, First Na-
tional Bank Building. [39]

**Petitioner's Exhibit No. 1 for Identification—Letter,
June 13, 1913, Johnson to Chapman.**

"San Francisco, California, June 13, 1913.

Miss Hattie H. Chapman,
No. 2225 Pacific Avenue,
Alameda, California,

My dear Madame: Herewith I enclose my check of
\$729.36, being the remainder of the amount due to
you from the purchase of your property on Tele-
graph Avenue in Oakland. The taxes and releases
amounted to \$332.56. The amount paid to Mr. Din-
kelspeil was \$971.00. The amount assumed at the
Farmers & Merchants Savings Bank was \$3,192.08.
The amount paid to Mr. Whitehead was \$11,000.00,
which items, together with your certificates and the
enclosed check, complete this transaction.

Yours truly,

ROOSEVELT JOHNSON."

Q. I ask you to state, Miss Chapman, whether or
not the certificates or papers I hand you, marked
No. 10,219, calling for \$10,000, and No. 10,220, calling
for \$9,000, are the certificates referred to in this let-

(Testimony of Hattie Hardesty Chapman.)

ter of Mr. Johnson. A. They are.

Q. I will ask you to tell the Court in regard to receiving these papers called certificates.

A. I received them on June 6, 1912, I think it was.

Mr. AYDELOTTE.—It is admitted, if your Honor please, that the complaint contains a copy of these certificates, and is on file here as an exhibit entitled “Answer,” which I filed to the trustees’ petition to sell, and that the exhibits are exact copies of those originals. I offer in evidence these two papers, and desire to withdraw them.

Mr. CLARK.—I would prefer, your Honor, that those papers be left here on file. I will stipulate that after this matter is disposed of, they may be withdrawn.

Mr. AYDELOTTE.—If your Honor please, the reason why I desire this course is this: I have not filed a claim, formally, before this Court, and I desire to do so, and will do so before my time expires. And when I file a formal claim I want to attach these originals to that claim.

Mr. CLARK.—We will consent that they may be withdrawn for that purpose, but we are desirous of having these certificates in, [40] because they are the very foundation of this case; and if this matter should go further I should want those certificates there for the inspection of the Court.

(After argument it was agreed that they should remain in the custody of the Court, to be withdrawn by the claimant after the final determination of the case.)

(Testimony of Hattie Hardesty Chapman.)

Mr. AYDELOTTE.—Then I wish to introduce this certificate No. 10,219 and certificate No. 10,220 as claimant's exhibits.

(Marked respectively: "Hattie Hardesty Chapman, Petitioner's Exhibit No. 2" and "Hattie Hardesty Chapman, Petitioner's Exhibit No. 3.")

Q. At the time of this transaction, Miss Chapman, with whom did you transact business on behalf of The Realty Union?

A. With Mr. Roosevelt Johnson.

Q. Did you know of his official capacity with the corporation at that time?

A. Why, he said he was the manager; the head man of it.

Mr. CLARK.—It will be admitted that he represented the company for all purposes which the testimony proposes to show he represented it for; that he was the vice-president and general manager of the company.

Mr. AYDELOTTE.—Q. Did you have any conversation with Mr. Johnson, Miss Chapman, with reference to the time of the payment of the balance of the \$19,000 on the property?

A. Why, he told me he would pay me that at the end of ten years, and then he was going to pay me six per cent interest. And they have it down that they will only pay every six months, and I said I needed the money oftener than that, so I would rather have it every month; so he said he would do that; he would pay me every month.

Q. I call your attention, Miss Chapman, to the ex-

(Testimony of Hattie Hardesty Chapman.)

hibits, wherein the words "semi-annually" are erased and the word "monthly" is written in the body of the instrument. Is that what you refer to in stating that the time was changed from semi-annually to monthly? [41]

A. Yes. He changed it.

Q. That was changed pursuant to your request that you wanted your interest monthly?

A. Yes, sir.

Q. Was there anything said about the possibility of their paying your money any sooner than ten years?

A. No, he said he could not pay it sooner than ten years. I asked him if I could not get it sooner and he said he could not promise it sooner.

Q. I will ask you whether or not you are still the owner of these promissory notes marked Complainant's Exhibits No. 2 and 3?

A. I think I am. I think you just presented them to the Court for me, though, so I am not sure.

Q. The ownership of those papers has always remained in you? A. Yes.

Q. You have never transferred them? A. No.

Cross-examination.

Mr. CLARK.—Q. Did you ever sell any property before this transaction occurred?

A. Any of what properties? How do you mean? Any property that I have had?

Q. Yes.

A. Yes, I have sold property in Alameda County a number of years ago.

(Testimony of Hattie Hardesty Chapman.)

Q. Did you ever sell any property before this transaction occurred, in which you agreed to wait ten years for your pay? A. No.

Q. Did you ever sell any property before this time, on credit, without taking security of some kind? A. No, I got my money right away.

Q. Did you consult any one in connection with this transaction, at all?

A. Yes, I had a man that arranged the sale for me.

Q. Was he an attorney or a real estate dealer?

A. Well, he had been an attorney but he was not practicing at that time.

Q. Who was that man?

A. Well, he was a friend of mine. Do you wish me to tell the name? [42]

Q. Well, I am not particular. But you did consult with that man who had had experience in real estate matters, did you, and a man who had had some experience in law matters?

A. Yes, he was supposed to have. He had not been practicing for a good many years, though.

Q. He was a man of about what age?

A. I think he was about 52, perhaps.

Q. Did he put this deal through for you? That is, was it he who, so far as you were concerned, originated or arranged for this deal?

A. Well, he told me about it, and so I decided to do it. That was all. I went up to Mr. Johnson, Roosevelt Johnson, to sell him the property.

Q. Was this proposition your proposition or Roosevelt Johnson's proposition? Were you en-

(Testimony of Hattie Hardesty Chapman.)

deavoring to sell your real property?

A. I had had no other offer for it, but I wanted to sell it, as it was encumbered, and it was an expense to me, and I thought this was a good opportunity to sell it if he wanted to buy.

Q. Had you listed this property with the man to whom you refer, for sale, telling him that you would like to have him find some one who would take it off of your hands?

A. I don't know as I asked him that, but he knew it was kind of bothering me, keeping up the taxes and all that, and I wanted to get rid of it. And as it was a hard matter to sell property at that time, I was glad to see Mr. Johnson and talk about it.

Q. And you thought that this was a very favorable price, did you?

A. I thought it was all right.

Q. Now had you told this man that you would like to sell this property? A. Had I told him that?

Q. Yes. A. No, I had not told him that.

Q. How did the Realty Union become acquainted with the fact that you were desirous of selling this property?

A. Well, I suppose [43] they must have known it was a good piece of property, and they probably had their eye on it and they wanted it, and they probably found out who owned it.

Q. Did you fix any price on it yourself, or did they suggest the price?

A. Well, I don't just remember how we came to that decision.

(Testimony of Hattie Hardesty Chapman.)

Q. Were there any other negotiations in regard to it, in writing, except those that are expressed in that letter that is read in evidence?

A. Not that I remember.

Q. That was the only writing that passed between you and the Realty Union?

A. I don't remember any other now.

Q. Now they told you that they would take care of this mortgage? A. Yes.

Q. They said they would pay it off? A. Yes.

Q. So that you never would be bothered with any possibility of any deficiency or any claim on account of the mortgage? They told you that, did they?

A. Yes, they told me they would pay off the mortgage.

Q. That they would clear off the mortgage?

A. That they would attend to all that.

Q. Now you understood that this company was a concern which was buying real property, did you not?

A. Of course I understood that they were buying property, yes.

Q. And did you read these certificates when you received them?

A. I think Mr. Johnson read them over to me.

Q. Where were you when he read them over to you? Where was it that you think he read them over to you?

A. It was up in his office, in the First National Bank Building.

Q. How long before that had it been suggested to

(Testimony of Hattie Hardesty Chapman.)

you that you should take these investment certificates? Right at the time when the proposition was first mentioned was it suggested that you [44] take these investment certificates?

A. Why, I don't know when we discussed it. I told them what property it was and so they said they would pay me in those notes.

Q. Did they call them notes or did they call them realty investment certificates when they first mentioned them to you?

A. Well, they probably called them that, I guess. That is their title to show for what property they got,

The REFEREE.—Q. You mean the investment certificates?

A. I don't remember just what was said. It is kind of hard to remember.

Mr. CLARK.—Q. You at that time had seen and read promissory notes, had you not? A. What?

Q. You at that time, at the time of these negotiations, and prior to that time, had read and were familiar with an ordinary promissory note?

A. Well, I don't know that I was. I never had any promissory note given to me. I never had any interest in knowing anything about them.

Q. Were you a graduate of any school? A. No.

Q. Had you gone to school?

A. Once, a little while.

Q. But you had had a start in business training, and had done some little in the way of business, so you had read promissory notes and knew what a promissory note was?

(Testimony of Hattie Hardesty Chapman.)

A. I don't know that I ever had read a promissory note.

Q. What was your age at that time?

A. That is rather a familiar question.

Q. Approximately. I just want to get this because I have to have it in the record. Were you thirty years old at that time? A. Yes.

Q. Did you talk with your mother about this transaction when it occurred?

A. Oh, I spoke to her about it; yes.

Q. How often did you talk with your mother about it? A. I don't know that. [45]

Q. Well, how often did you talk with this gentleman who was advising you with respect to this matter?

A. I can't say how often I spoke to him. I spoke to him a number of times, I guess.

Q. How many times?

A. I don't know how many times.

Q. Were you living at home with your mother?

A. Yes.

Q. At this time? A. Yes.

Q. And she knew that this transaction was about to be consummated? A. Yes.

Q. Now, it is your impression that you either read this investment certificate there, or it was read to you at the time you accepted it? A. Yes.

Q. When this was read to you, Miss Chapman, did you notice that there was in this certificate a promise to pay to you something in the way of dividends in the event that the dividends in this company ex-

(Testimony of Hattie Hardesty Chapman.)

ceeded a certain specified amount?

A. Yes, I remember that.

Q. You remember that? You knew that this was a company which was buying and selling real property, didn't you? A. Yes.

Q. And that that was the way in which, if it paid dividends or profits, it was hoping to make them? You understood that, didn't you?

A. Well, I didn't think that the dividends would amount to anything, particularly to me, because I thought, well, if they had to make money, why, it would simply increase my interest.

Q. That is, it would simply be added to what you would get?

A. Instead of my getting six per cent, why, perhaps they might be able to pay me seven per cent; something like that.

Q. But you did understand that if this company made money it would make it by buying and selling real estate, didn't you?

A. Why, yes, that is what I understood.

Q. Well, now, as regards this particular piece of property which you turned over to them, you fully understood that that piece of [46] property would pass right into the usual amount of property which they had, and that they would deal with that just like they would deal with any other item of property, didn't you?

A. Well, I supposed they would try to sell it and I expected them to pay me for it.

Q. You expected them to pay you for it, but at the

(Testimony of Hattie Hardesty Chapman.)

same time, knowing the business in which this concern was engaged—

A. (Int.) I didn't want to give it to them for practically nothing.

Q. At the same time, you didn't expect them to sit down and hold that piece of property until the end of ten years?

A. I didn't know how they were going to get my money to pay me.

Q. But you knew that this concern was a concern, as you have stated, which bought and sold real property? A. Yes.

Q. That was clear in your mind? And that if it made any of this extra per cent price or dividends which they referred to, that it would make them by buying and selling real property, any such real property as they had? You understood that, didn't you?

A. Why, yes.

Q. There was no restriction put by you at the time of these negotiations, upon them, in the nature of a provision against their selling or dealing with this particular piece of property that you turned over to them?

A. Why, no; I didn't care how they got me my money as long as they kept their word and paid me the money they owed me.

Q. You didn't expect that this particular piece of real property would be reserved in any way, did you, and treated by them any differently than any other piece of real property which they might hold?

A. I didn't think anything about it. I just sold

(Testimony of Hattie Hardesty Chapman.)

them the property, and they were expected to get me the money in ten years and to pay me my interest regularly. They paid me the [47] interest up to a certain time, and then they stopped.

Q. Well, now, this particular certificate that I now hold—they both read the same. This is the one that promises to pay \$9,000. It also states: "This certificate is transferable only upon endorsement and surrender. Any owner of investment certificates of a paid-up value of not less than \$100 may exchange them for unimproved realty held for sale by the corporation." A. Yes, sir.

Q. Did you understand that simple language inserted in that certificate?

A. I didn't pay any attention to it, because I didn't want any unimproved property. I had just gotten rid of unimproved property and I had been promised something for it, and I wanted my money. I didn't want unimproved property for it. So I was not going to exchange my certificate for any unimproved property. I didn't want that.

Q. Suppose there had been a piece of unimproved property which in your judgment was likely to rise materially in value, and which was being held by the Realty Union at a low price, don't you think that you would have desired to turn in this investment certificate at its face value and procure that real property and hold it?

Mr. AYDELOTTE.—Just a moment. We object to that question on the ground that it is incompetent, irrelevant and immaterial and not proper cross-ex-

(Testimony of Hattie Hardesty Chapman.)

amination, and has nothing to do with the issues of the case.

The REFEREE.—The objection is sustained.

Mr. CLARK.—Q. Well, referring to this language here which you have just to some extent elucidated, you clearly understood this clause in this investment certificate: “Any owner of investment certificate of a paid-up value of not less than \$100 may exchange them for unimproved realty held for sale by the corporation”? You understood the meaning of that simple clause in that certificate, didn’t [48] you?

A. I guess I did. I didn’t think much about it, though.

Q. Well, now, let me ask you this: At this time you stated that these properties of yours were unimproved. A. Yes.

Q. These that you turned over to the Realty Union? A. Yes.

Q. When this certificate was issued to you, you saw that it had a certain number upon it, didn’t you? Both of these certificates were numbered?

A. Yes.

Q. And you also understood that these investment certificates were a form of document or a contract that was being issued by this Realty Union at this time, didn’t you?

A. I understood that they issued those, yes.

Q. They issued them in exchange for property or for cash?

A. I don’t know exactly what you mean.

(Testimony of Hattie Hardesty Chapman.)

Q. What I mean is, you knew that they were engaged in turning these things out or dealing in these things, delivering these things to the public for a consideration? That that was the character of this concern? That that was one of their sources of revenue?

A. I don't know that I thought anything about its being one of their sources, or anything of the kind. I simply knew that I was selling to them and that they promised to pay me at such and such a time. And I believed that they were reliable.

Q. Is the statement which you made just a moment ago correct, that you did at that time understand that they were issuing certificates like these?

A. Well, I had never seen one before I got that.

Q. No, I am not asking whether you had ever seen one before. Was there anything connected with the transaction, or from your prior knowledge or from what you knew of the concern—you said you knew of them before—was there anything from which you at that time thought or understood that the corporation was issuing these investment certificates?

A. I didn't know even the name of them. I didn't know if they called them investment certificates.

Q. Aside from that. Aside from whether you knew the name of them [49] or not, did you understand that this company was issuing these investment certificates and paying interest on them at this time?

A. I knew they paid interest on—I don't know. You are getting me kind of rattled.

(Testimony of Hattie Hardesty Chapman.)

Q. What I mean is just this. It is a simple proposition: whether you knew that this company had been issuing other certificates to other people in the same way that they were issuing these certificates to you. What was your impression in regard to it?

A. Well, I supposed that they had been dealing with other people; that they were dealing with other people; and that they had the same method of dealing with them that they had with me.

Q. That is not a full answer to the question. My question is whether it was your impression that this company had outstanding, other certificates. Well, I supposed they had.

Q. Well, now, you have just mentioned here a moment ago that Mr. Johnson scratched out on this form, the words "semi-annually." You saw that they had these printed forms there?

A. That was just after we had been talking it over and I had about decided to let them have the property.

Q. You saw that they had these lithographed forms?

A. I had not thought particularly about that.

Q. What I mean is this: You fully understood that these were not the only two certificates which the Realty Union had issued or was going to issue?

A. No, I didn't think they had only two.

Q. Now, when Mr. Johnson referred to this matter here of paying interest semi-annually, he told you that that was the period of time for paying interest on their certificates generally, didn't he?

(Testimony of Hattie Hardesty Chapman.)

A. He said that that was what he wanted to pay, and I said that I would rather have mine every month instead of that long, because I needed the money. [50]

Q. He told you that this was the regular interval for paying the interest?

A. He didn't say anything about its being the regular interval. He read it to me and I said I would rather have mine every month, and he said he would arrange it in that way.

Q. Yes. Well, now, you said that you didn't have any idea of turning these things in for unimproved real property. Was that your answer?

A. No, I hadn't thought about it, because I didn't want any more unimproved property. I needed the money.

Q. How long was it after you got these investment certificates before you did in fact apply to the Realty Union Company for an exchange of unimproved property for your instalment investment certificates? A. How long afterwards?

Q. Yes.

Mr. AYDELOTTE.—Mr. Reporter, please read the question. (Question read.) I object to that upon the ground that it assumes a fact as proven which has not been proven.

The REFEREE.—The objection is sustained.

Mr. CLARK.—I withdraw the question.

Q. Did you, after you received those investment certificates request of your attorney or of any one else that they apply to the Realty Union for unim-

(Testimony of Hattie Hardesty Chapman.)

proved realty to be received by you in exchange for your investment certificates?

A. Did I apply to my attorney? (Question read.)
Let me see. The first of the year I—

Q. (Int.) This last year, you mean? A. Yes.

Q. Because this concern was adjudicated a bankrupt in August or September last year.

A. I told my attorney that I thought it would be a good idea if he were to find out whether they had any unimproved property that I could exchange for. I told him to find out what they had.

Q. Did you further request your attorney to exchange these instalment investment certificates for unimproved real property if they [51] had any that was for sale and was desirable?

A. Well, I thought if they had I naturally would want to talk that over after I found out.

Q. Now, did you understand that any other persons were making a similar request of the Realty Union? A. To exchange?

Q. Yes.

A. I think I heard that people were trying to get property.

Q. For their certificates? A. Yes.

Q. Well, now, when you received those investment certificates, and understanding that language in those investment certificates about the privilege of exchanging them for real property, you fully understood that the Realty Union might put this very piece of property that they got from you on sale or exchange for certificates, didn't you?

(Testimony of Hattie Hardesty Chapman.)

A. No, I didn't think anything about it, actually.

Q. Well, you knew your piece of property was unimproved?

A. I imagined they would want to hold it so that it would increase in value.

Q. But as regards their right to sell it if they desired, you fully understood that it was unimproved real property, didn't you?

A. I understood that.

Q. And you understood that these certificates contained this clause about permitting people to turn in the certificate and receive property in exchange for it? A. Yes.

Q. You understood that. So far as the Realty Union was concerned, and what they stated they would be willing to do, was not the proposition from the very outset that they would satisfy your demand to the extent of \$19,000 altogether with certificates, investment certificates?

A. What did those certificates mean to me? They meant only that they were going to pay me so much money, didn't they? What did I want of their little certificates? They [52] didn't mean anything to me except that they promised to pay me so much. It was \$19,000. I didn't care about their little certificates. I only wanted their money. That is the way I had of their putting it down, to show me when they would pay it. So I took their certificates. Otherwise they would not appeal to me. Would they appeal to you? I didn't want to frame them.

Q. At that time they might have appealed to me.

(Testimony of Hattie Hardesty Chapman.)

A. They didn't to me.

Q. What I mean is this: They never at any time said to you that they would pay you \$19,000 in cash and assume this mortgage?

A. They certainly did. Mr. Roosevelt Johnson said they would pay me \$19,000 at the end of ten years, and he issued those ten-year certificates bearing six per cent interest every month.

Q. Did he state that this, however, would be paid only in investment certificates? Didn't he say that?

A. No, he told me he would pay me in hard cash. He didn't say anything about investment certificates.

Q. Did he state that so far as the company was concerned, that the only way in which the company could satisfy this demand at the present time was by giving investment certificates?

A. He said he could not pay me the money now, but he would give me these papers, or whatever you call them, and he would give me my money at the end of ten years.

Q. Had you at this time heard of any other people having bought these investment certificates?

Mr. AYDELOTTE.—We object to that question as incompetent, irrelevant and immaterial.

The REFEREE.—The objection is overruled. (Question read.) A. No.

Mr. CLARK.—Q. Had you never heard in your life, prior to the time of receiving these investment certificates, of any other human being [53] who had received any of them?

A. I didn't know of a soul that had ever had one

(Testimony of Hattie Hardesty Chapman.)

of those investment certificates, or those notes.

Q. Did you talk over with this friend of yours the propriety of receiving these investment certificates? A. I talked it over with him, yes.

Q. What did you tell him?

A. Well, I said I would look into the matter.

Q. You told this man that you would look into the matter?

A. Yes. I think I did. I can't remember my exact words. It is so many years ago now.

Q. What did he say to you about these investment certificates?

A. Well, I suppose that he must have thought that they were all right. I can't remember what he did say.

Q. How long did you deliberate on the question whether you would or would not receive investment certificates? A. I don't remember that.

Q. Do you think that you just simply accepted them instantly in lieu of cash?

A. No, I thought it over, but I don't remember just how long I thought it over.

Q. How long was it between the time of taking the investment certificates and your talking of taking them?

A. I don't know. I really can't remember.

Q. Did you talk with your mother about receiving these investment certificates?

A. Oh, I talked to her about selling this land to the company.

Q. Did you talk to your mother about receiving

(Testimony of Hattie Hardesty Chapman.)

these investment certificates?

A. I don't remember that. I can't remember that long, what happened.

Q. You say you were living at home with your mother?

A. I talked with her about selling to them, naturally, and my mother [54] said she didn't know anything about the company, so I don't know whether I talked very much to her about it.

Q. Did you talk to your mother about this company at the time?

A. Oh, I remember asking her if she knew anything about it, and I think she said she didn't know much about the company, and wanted me to use my own judgment.

Q. Did you ask this gentleman that you wrote to, whether he knew anything about the company?

A. Yes.

Q. What did he tell you?

A. He said he thought the people in it were very good, honest and reliable people, if I remember rightly.

Q. Did you talk with any one else than this gentleman about it? A. I don't remember that I did.

Q. Did you mention the fact that it was suggested that you take \$19,000 in investment certificates?

A. I don't remember.

Q. You don't remember that you told a living soul that you were contemplating taking \$19,000 in investment certificates of the Realty Union?

A. I don't remember that I did. I am not a per-

(Testimony of Hattie Hardesty Chapman.)

son that goes around telling my business to everybody.

Q. Would you say that you didn't suggest it to any person?

A. No, I wouldn't say that, because that might not be the truth.

Q. Is it your impression that you did mention to this gentleman that you were going to take, or that you were considering taking investment certificates?

A. What gentleman?

Q. This man that you referred to. Did the company make you a cash offer, any cash offer for this at all? I mean spot cash. A. No.

Q. You say it was about the first of the year 1915 that you told your attorney to see whether he could turn these certificates in and get some unimproved property for it? A. What is that?

Q. I ask you, wasn't it about the first of the year 1915 that you asked him to see whether he could turn these certificates in for [55] unimproved property? A. I don't remember.

Mr. AYDELOTTE.—My best recollection is that it was about the first week in March, 1915; about that time. But I don't wish by my answer to admit any of the facts stated by counsel or assumed by counsel in his question.

Mr. CLARK.—Q. How many times did you speak to your attorney about this matter of turning in these investment certificates for unimproved real property?

Mr. AYDELOTTE.—We object to that question as incompetent, irrelevant and immaterial, and as-

(Testimony of Hattie Hardesty Chapman.)

suming a fact not proved, that she ever spoke to her counsel about exchanging any certificates.

Mr. CLARK.—Q. Did you ever speak to your counsel about exchanging any certificates for real property?

A. No, I didn't say that. I told you I asked him about getting a list of properties that they had to exchange. I didn't tell you that I asked him to exchange, or asked the company to exchange.

Q. Why did you want a list?

A. I wanted to see what they had.

Q. Had you in mind the turning in of your investment certificates at that time for unimproved real property?

Mr. AYDELOTTE.—We make the same objection.

The REFEREE.—The objection is overruled. (Question read.) A. No.

Mr. CLARK.—Q. What did you want the list for?

A. Well, maybe if I had seen the list and they had anything very fine, I might have considered it. But I did not consider it.

Q. Now when you made these enquiries about the Realty Union, what was your object? A. What?

Q. In making these enquiries.

A. Because I was thinking of selling my land to them, and if they were not good people I certainly did not want to give them my property.

Q. You didn't want to extend to them a ten years' credit? [56]

(Testimony of Hattie Hardesty Chapman.)

A. I didn't want to sell to them and take their note unless they were good, reliable people.

Q. So far as you were concerned, you were satisfied that this \$19,000 was going to be paid, because you believed they were entirely solvent?

A. I thought they were good people or I certainly would not have sold to them.

Q. You were looking at that time, in making your enquiries about their solvency and their financial standing, to their promise to pay you, and not to any particular piece of real property as being security? Isn't that the fact?

A. Well, I told you, I was investigating to see who was conducting this company. That was the first. When do you mean?

Q. When you made this deal, and when you were making this investigation as to the financial condition of this company, you understood that if you took these documents or these papers for \$19,000, that you would be looking to the company and not to any particular piece of real property as security for the payment of these instruments? Isn't that the fact?

Mr. AYDELOTTE.—We object on the same ground; incompetent, irrelevant and immaterial and not definite; an assumption of fact not proven.

The REFEREE.—The form of the question is rather complex.

Mr. CLARK.—I withdraw the question.

Q. You have told us that you spoke to this gentleman and that you talked to your mother, and that

(Testimony of Hattie Hardesty Chapman.)

your impression would be that this gentleman told you that this concern was all right. And you were making some enquiry, as I understood you, to find out whether this was a concern that would pay its debts. Isn't that right? A. Yes.

Q. And you satisfied your mind in regard to that, didn't you? A. I thought I did; yes.

Q. Then when you took these certificates you understood that you [57] were looking to the company generally, for the payment of the money, and not looking to any particular piece of real property as security for the payment of the money? Isn't that the fact?

A. When I took their notes I understood that they were going to pay me in a certain time, and I didn't think about—I thought they were good people and that they would pay me. I didn't think just about a particular piece of property, but I thought that they were all right.

Q. You never suggested that they give you back a mortgage on this piece of real property?

A. I didn't suggest anything like that.

Q. You didn't suggest that they make you an instrument that would indicate that this particular piece of real property would be security for the payment of this money?

Mr. AYDELOTTE.—Do you mean at the time she received the certificates?

A. I didn't suggest that they give me any mort-

(Testimony of Hattie Hardesty Chapman.)

gage, no. I simply took their notes, and I thought that was all right.

Q. And you fully understood that it was necessary for you to make enquiry as to the financial standing of this company?

A. I wanted to find out whether they were good, honorable men, and they all seemed to be fine men, and so I thought it was all right, simply because they were men of good standing. I was told that they were all men of fine reputation at that time, or I am sure that I would not have sold to them and accepted their notes. I didn't go into worrying about it otherwise. I thought it was all right. I didn't think they were going to try to hold me up or take my land away from me.

Q. Did you conclude in your mind that they were a solvent concern from which it would be safe to accept a promise to pay ten years from date?

A. I did.

Q. You did? You at least made investigation sufficient to bring [58] you to that conclusion?

A. Yes.

Q. Who told you that this concern dealt in real property?

Mr. AYDELOTTE.—When.

Mr. CLARK.—At that time or any time.

Q. This friend of yours? A. Yes.

Q. Did he tell you where its holdings were?

A. I understood that they were in Oakland and Berkeley.

Q. That it was principally an Alameda concern,

(Testimony of Hattie Hardesty Chapman.)

holding property in Alameda County?

A. That is what I understood.

Q. Did he tell you how long he had been familiar with it or its members? A. This friend?

A. Yes. A. No.

Q. He did not?

A. I don't remember; no.

Q. Was the \$11,000—how was that paid?

Mr. AYDELOTTE.—If you know.

Mr. CLARK.—Q. You have introduced a letter signed by Roosevelt Johnson, addressed to Miss Chapman, stating that the taxes and releases amounted to \$332.56; that the amount paid to Mr. Dinkelspeil was \$971; that the amount assumed at the Farmers & Merchants' Savings Bank was \$3,192.08; that the amount paid to Mr. Whitehead was \$11,000. What was that paid to Mr. Whitehead? What was that demand?

A. Those were liens or mortgages on the place.

Q. Those were liens or mortgages on the place?

A. Yes.

Q. You received cash how much? You received a check for \$729.36 which was cash, did you?

A. Yes.

Q. And they paid off against the property, taxes and releases and so forth, \$332.56, and they paid something to Mr. Dinkelspeil for you, did they?

A. Yes.

Q. Did you understand you were to turn over this property to the company directly?

A. I sold to The Realty Union, yes.

(Testimony of Hattie Hardesty Chapman.)

Q. To whom did you execute the deed? [59]

Mr. AYDELOTTE.—The deed will show.

Mr. BRANDT.—Q. Was it after or prior to the transaction in which property had been deeded to Caro Mills?

Mr. AYDELOTTE.—We object. The writing is the best evidence.

Mr. CLARK.—I would like to have a statement from counsel as to how long that property was held by Caro Mills before these certificates were received. I understand Caro Mills was one of the officials of the company, or that he was connected with the company.

Q. You turned this property over first, to some one connected with the company, didn't you?

A. I sold to the Realty Union. It didn't make any difference who was standing up for them or taking the property. The Realty Union paid me and I didn't have any dealings with anybody else.

Q. Did you know that Caro Mills paid off a mortgage on this property for \$5,000?

A. No, I didn't know that. I was surprised afterwards when I saw that Caro Mills had gotten it. I didn't know Caro Mills or anybody but the Realty Union, in the transaction.

Q. Was this \$5,000 part of the \$11,000?

Mr. AYDELOTTE.—If you know.

A. No, I don't know anything about it.

Mr. CLARK.—Q. Was the \$5,000 part of the \$11,000?

A. I don't know anything about that.

Mr. BRANDT.—Q. Do you remember the trans-

(Testimony of Hattie Hardesty Chapman.)

action with Mr. Whitehead about that particular property?

A. I had forgotten. I just knew that I was selling to the Realty Union. I didn't think anything about who was transacting the business for me.

Q. Was it all one transaction?

A. No, I think it was in two.

Q. Didn't you first transfer the property to Caro Mills, and then didn't it go through Mr. Whitehead?

A. I think the first part of it was—I found out afterwards was Caro Mills, but the name didn't mean anything to me at that time. [60]

Mr. CLARK.—Q. Did you borrow any money on this property after it was turned over this way, before you consummated the deal with the Realty Union?

A. No.

Q. When were these liens put on the property?

A. Which liens?

Q. You say certain mortgages were put on.

A. Those were on before I got the property.

Q. How long before you held this property?

A. I don't know. I held it quite a while.

Q. About how long? A. I don't know.

Mr. AYDELOTTE.—I object to that as immaterial.

Mr. CLARK.—Q. What did you pay for it?

Mr. AYDELOTTE.—I object to that as incompetent, irrelevant and immaterial.

The REFEREE.—The objection is sustained.

Mr. CLARK.—Q. You say the mortgages were

(Testimony of Hattie Hardesty Chapman.)

given by someone else before you got the property?

A. The mortgages were on.

Q. Are you sure you didn't sign or renew any of the mortgages after this property was turned over to you?

A. I am not sure about that. You can find it if it is in the records.

Q. What is your best impression?

A. I really don't want to say, because I can't remember. And I think you can look at the records.

Q. Will you tell us then about how long you held it after you got it?

Mr. AYDELOTTE.—I submit that that is immaterial.

The REFEREE.—I will allow the question to be answered.

A. I can't remember just how long. I would hate to tell you things that might not be so.

Mr. CLARK.—Q. Were there not any notes or mortgages then against that property?

A. I am not sure of that either.

Q. Would you not remember so important a circumstance as your executing [61] a note and mortgage upon a piece of property?

A. I don't know. A mortgage may have been changed or something. I can't remember exactly.

Q. What makes you think that it may have been changed?

The REFEREE.—There ought to be a record of these things.

Mr. CLARK.—Q. You understood, though, that at

(Testimony of Hattie Hardesty Chapman.)

the time this property was taken over by the Realty Union, that it was going to assume and pay those mortgages? A. Yes.

Q. That is distinct in your mind, that they were going to pay them?

A. Yes, I remember that, because Mr. Johnson wrote and told me that they did.

Q. Have you the letter here wherein he told you?

A. I think you have that; the one you were reading.

Q. This is the letter you refer to? (Referring to Petitioner's Exhibit No. 1.) A. Yes.

Q. That was understood right at the outset that they were going to assume and pay off those mortgages? A. Yes.

Q. And clear that property of the debt?

A. Yes, that was a part of the price.

Mr. BRANDT.—Q. Do you remember whether there had been threatened foreclosure proceedings on the 153 feet parcel?

Mr. AYDELOTTE.—We object to that as incompetent, irrelevant and immaterial.

The REFEREE.—The objection is overruled. Answer the question.

A. I don't remember that.

Mr. BRANDT.—Q. Do you recollect taking up at that time with Mr. Whitehead the question of taking over that mortgage on the 153 feet?

Mr. AYDELOTTE.—We make the same objection.

The REFEREE.—Overruled.

(Testimony of Hattie Hardesty Chapman.)

A. I have forgotten about that. I don't know. I didn't think [62] anything about this.

Mr. BRANDT.—Q. What I have in mind is whether it was not the fact that after Mr. Whitehead had taken over the property from you, that an agreement was made whereby he was to give you thirty days in which to redeem?

Mr. AYDELOTTE.—I make the same objection.

The REFEREE.—The objection is overruled.

Mr. BRANDT.—The question is withdrawn.

Q. Do you recollect any agreement with Mr. Whitehead by which he was to take the title to the property in Caro Mills, his nominee and he was to pay off and discharge the mortgage and give you 30 days within which you could get the property back?

Mr. AYDELOTTE.—We make the same objection.

The REFEREE.—The question is whether she remembers such an arrangement.

Mr. BRANDT.—Q. Do you remember such an arrangement with Mr. Whitehead?

A. I don't remember.

Q. Did you yourself execute a deed to the property? Or do you recollect it? To the Realty Union, I mean?

A. I signed my name to it.

Q. Do you recollect about any transaction with Mr. Whitehead?

A. I have forgotten.

Redirect Examination.

Mr. AYDELOTTE.—Q. As a matter of fact, Miss

(Testimony of Hattie Hardesty Chapman.)

Chapman, didn't you have your dealings with Mr. Johnson, and do whatever Mr. Johnson told you to do with reference to the signing of the papers and the making of the transfers? A. Yes.

Q. Isn't it a fact, Miss Chapman, that Mr. Johnson, at the time of the handing to you of these promissory notes which counsel designates by the high-sounding name of investment certificates [63] did you have any conversation with him at that time about your holding these promissory notes and not selling them?

A. He told me not to sell them, he said, because it was all right, and I would get my money in ten years. And he said it would be fine for me, and that I would get my money in ten years and would get my interest every month.

Q. Did he state anything to you about the Realty Union holding this property because it was good property?

A. Yes, he told me that this was valuable property and "we are going to hold that until the very last," because he said, "it will increase in value."

Q. I will ask you, if it is not a fact, Miss Chapman, that you called upon Mr. Johnson with reference to exchanging—or with an enquiry in your mind about exchanging these certificates for property, and whether you did have a conversation with Mr. Johnson on that very point. A. Yes.

Q. And what did Mr. Johnson tell you with reference to the exchange of property, if anything?

A. He told me, he said, "I would not advise you,

(Testimony of Hattie Hardesty Chapman.)

Miss Chapman, to exchange for any of the property," because he said, "If we stick together here," why, he said, "We will pull through all right." I said, "Mr. Johnson, I think you can take better care of it than I can."

Q. I will ask you if this conversation, together with the conversations which counsel has asked you about a few moments ago with reference to liens on the property—I will ask you if it is not a fact that all of those conversations were with reference to a possibility of a compromise settlement of this difficulty, and that they all occurred after the Realty Union had defaulted in the payment of interest on these notes? A. Yes, they occurred afterwards.

Q. I hand you a letter, Miss Chapman, and ask you if you received [64] that letter from the Realty Union? A. Yes.

Mr. CLARK.—We have no objection to that letter, your Honor.

Mr. AYDELOTTE.—I desire to introduce this letter in evidence and ask to have it marked "Exhibit No. 4." I will read it into the record and will hereafter withdraw it.

Mr. CLARK.—We will waive the reading of it. I would like to have the exhibits stay here.

Mr. AYDELOTTE.—I don't care. I will leave them here with the understanding that I may withdraw them to make my record.

Mr. CLARK.—Not while the case is on.

Mr. AYDELOTTE.—Oh, no, but for making my record.

(Testimony of Hattie Hardesty Chapman.)

(The document was marked: "Petition of Hattie Hardesty Chapman. Petitioner's Exhibit No. 4." Following is a copy of the exhibit:)

**Petitioner's Exhibit No. 4—Letter, March 15, 1915,
Johnson to Chapman.**

"THE REALTY UNION.

FIRST NATIONAL BANK BUILDING.

San Francisco, California, March 15, 1915.

Mrs. Hattie Hardesty Chapman,

No. 2225 Pacific Ave.,

Alameda, Cal.

Dear Madame: Owing to the present unavailability of money for investment in securities, due to the effect of European conditions, together with national and local causes, the Realty Union has decided to discontinue the sale of its securities, and to prepare its properties for marketing, using the proceeds thereof for the repayment of its Investment Certificates.

It may be, during the period which will be required to prepare its properties for the market and to institute sales, and which will probably be several weeks, that payments upon Investment Certificates will have to be withheld.

In this event we ask the full co-operation of our investors in the foregoing plan, which we believe will bring much swifter returns to them than any other that could be adopted in view of the present condi-

(Testimony of Hattie Hardesty Chapman.)

tion of the money market.

Very truly,
ROOSEVELT JOHNSON,
Manager."

Mr. AYDELOTTE.—I offer in evidence this letter, dated April 8.

(Marked: "Petition of Hattie Hardesty Chapman. Petitioner's Exhibit No. 5." Following is a copy of the exhibit:)

**Petitioner's Exhibit No. 5—Letter, April 8, 1915,
Johnson to Chapman.**

"THE REALTY UNION.

FIRST NATIONAL BANK BUILDING.

San Francisco, California, April 8, 1915.

Miss Hattie Hardesty Chapman,

No. 2225 Pacific Ave.,

Alameda, Cal.

Dear Madame: We now have a number of our properties for marketing. [65]

If you contemplate purchasing land for a home or for investment in Oakland or in Berkeley, our representative will be glad to call upon you with maps at your request.

Very truly,
ROOSEVELT JOHNSON,
Manager."

Q. I will ask you to state, Miss Chapman, if it is not a fact that the conversation with Mr. Johnson to which you have referred, in which you state that Mr. Johnson advised you not to turn in these so-called

(Testimony of Hattie Hardesty Chapman.)

certificates for property, and the time in which your attorney went to see Mr. Johnson with reference to getting some lists of these properties, if that was not after the receipt of both of these letters referred to as Plaintiff's Exhibits 4 and 5, together with another conversation with Mr. Johnson with reference to the possible execution of a mortgage on this identical property and the execution of a new note to run for three years—if all of these things which I have just stated was not in pursuance of an attempt to a possible compromise of this difficulty?

Mr. CLARK.—We object to that question as compound, complex, mixed, leading and suggestive.

The REFEREE.—A portion of it has been testified to. There is some new matter. The objection is sustained. There are some facts not in evidence assumed in the question.

Mr. AYDELOTTE.—I will put it this way:

Q. I will ask you whether or not you had any conversation with Mr. Johnson with reference to the exchanging of these so-called certificates for property otherwise than as a compromise proposition after consultation with your attorney?

Mr. CLARK.—We object to that as called for a conclusion.

The REFEREE.—Sustained.

Mr. AYDELOTTE.—Q. You were asked on cross-examination, Miss Chapman, what conversation you had with your attorney with reference to getting a list of property. Will you state what that conversation was, with your attorney?

(Testimony of Hattie Hardesty Chapman.)

A. I just asked you to get the list, didn't I? [66]

Q. For what purpose?

A. As I stated before, if the property was good, I would exchange it.

Q. I will ask you if that was done in pursuance of a proposition discussed with Mr. Johnson, to an amicable settlement of this matter.

Mr. CLARK.—We object to that as calling for a conclusion.

Mr. AYDELOTTE.—I will withdraw it.

Recross-examination.

Mr. CLARK.—Q. Now, you are quite distinct in your impression that Mr. Johnson told you that they had in mind the holding of this piece of property that they got from you, because they thought it would increase in value?

A. Yes.

Q. Well, did you expect, when he told you that, that if it increased in value so that there was a chance for a selling of it at a good profit, that they would sell it at a good profit?

A. Why, sure they would have. That is business, isn't it?

Q. That is business in that business. Now, you also stated that you had a talk with him, with Mr. Johnson, in which he told you that he would advise you not to exchange your certificates for real property. Did you have such a conversation?

A. I had a conversation with Mr. Johnson, yes, in which he said he would not advise me to exchange.

(Testimony of Hattie Hardesty Chapman.)

Q. Now then, you went to see Mr. Johnson independently of your attorney, didn't you?

A. I went there by myself, yes, to see if I could not get my interest.

Q. Was that before you saw an attorney about this matter at all?

A. No, I think it was after I had seen my attorney.

Q. After you had seen him? Did you go there with your attorney's knowing that you were going? Was it by the advice of your attorney that you were going to see Mr. Johnson?

A. I went there several times. Sometimes he knew I was going to see him and sometimes he did not. [67]

Q. Did you, on more than one occasion talk with Mr. Johnson about exchanging these certificates for unimproved real property?

A. I have forgotten that. But I know this time he advised me so strongly to not exchange, because he said if everybody would not rush in on them, that they could save it.

Q. But up to that time had you in mind the idea of turning in these certificates and obtaining from the Realty Union some of its unimproved property?

A. If I could have gotten good unimproved property I would have taken it. But he told me not to, so I said "All right."

Q. What facts brought to your mind the advisability of turning in these certificates for unimproved property?

A. Well, if I could not get my interest, why then I

(Testimony of Hattie Hardesty Chapman.)

suppose I commenced to worry about it.

Q. But at that time it would have been of no importance to you where the unimproved property was located, so long as it was a desirable piece? Is not that true?

A. Well, I will tell you. I wanted to get this property back that I had sold them. That was what I was trying to do.

Q. Yes.

A. And I don't know. He said he was going to give me a mortgage on it.

Q. Was that the occasion that Mr. Aydelotte mentioned in his question to you, when the mortgage was mentioned?

A. I had so many questions asked me, I don't know.

Q. You answered me a little while ago, that if they had some unimproved real property that was desirable, you were of the mind to turn in your certificates for this property. Didn't you make such an answer?

A. Well, yes, if I could have found good property.

Q. If you could have found good property?

A. But I wanted to get this property back that I had sold them, because I thought they [68] could not have any better than that.

Q. But if they did have some that you thought was not quite so choice as that, and that was not as valuable, you would have been perfectly willing to accept it? Isn't that right?

A. If it was good property, yes.

Q. And you understood that your paper here gave

(Testimony of Hattie Hardesty Chapman.)

you the right to call upon them for a list of their property?

A. They sent me out word, I think, to that effect, didn't they?

Q. Well, you looked at your investment certificate, and you understood that your investment certificate entitled you to call upon them for a statement of their properties, and entitled you to exchange, if they had any for sale, didn't you? A. Yes.

Q. When you did speak to him about this particular piece of property, this piece that you turned over to them, did you ask him whether that was among the properties which was available for exchange on the turning in of these certificates?

A. I think I did, and I believe he told me at the time that he wanted to hold that.

Q. Did you then state to him that you would like—or had you stated to him generally that you would like to have from him a statement of the properties that could be received in exchange for certificates?

A. I told my attorney to attend to that for me.

Q. Then you had told your attorney to go to Mr. Johnson and see if he could procure for you a list of the properties which the company was willing to exchange for certificates? A. Yes.

Redirect Examination.

Mr. AYDELOTTE.—Q. State whether or not you took that action in response to the advice of your attorney. A. What is that?

Q. State whether or not you asked them for those lists in response to advice from your attorney?

(Testimony of Hattie Hardesty Chapman.)

A. I did.

Q. I ask you as to whether or not you ever did get any such list, [69] or any list of properties from Mr. Johnson? A. No.

Q. I will ask you as to whether or not Mr. Johnson was asked by your attorney to furnish any list?

A. I asked my attorney about a half a dozen times if he had gotten the list yet.

Recross-examination.

Mr. CLARK.—Q. You think it was as many as half a dozen times that you enquired of your attorney whether he had obtained a list of properties from the Realty Union for the purpose of exchanging your certificates?

A. Yes.

Q. That is correct? A. Yes.

Q. You think, allowing that that is possible, that you asked your attorney a half a dozen times whether he had received a list of property from the Realty Union for exchange purposes, that you were in an attitude of mind that you were perfectly willing to turn in these certificates if you could receive property in exchange? Is that right?

A. If I could get good property, I would.

Q. That was your idea right from the outset, when you started in to talk about exchanging your certificates, wasn't it?

A. That if I could get good property, I would consider the matter of exchanging.

(Testimony of Hattie Hardesty Chapman.)

Redirect Examination.

Mr. AYDELOTTE.—Q. You noticed in that so-called certificate the provision in reference to the exchange for property, Miss Chapman?—you noticed that it did not specify any particular price at which they should offer you any property at?

A. No.

Q. You noted that? A. Yes.

Q. And you noted, did you, that under that certificate the power of fixing the price of the property supposed to be exchanged, was left with the corporation? A. Yes, sir. [70]

Recross-examination.

Mr. CLARK.—Q. Did you expect that if you turned these investment certificates in and received back the property, that the price of the property would be fixed by the corporation?

A. I don't understand exactly. I don't understand your meaning.

Q. Let me put this very clearly, then. You stated that you went to Mr. Johnson and you had in mind the getting back of this particular piece of property.

A. Yes.

Q. You have now answered counsel that you understand from the face of the certificate that the corporation would fix the price at which property would be exchanged for certificates. I call your attention to what he refers to. Maybe you didn't understand Mr. Aydelotte's question. This reads: "Any owner of investment certificates of a paid-up value of not less than \$100 may exchange them for unimproved

(Testimony of Hattie Hardesty Chapman.)

realty held for sale by the corporation.” You understood from that language in the certificate that the corporation, in exchanging property would fix some price on it, didn’t you?

A. Why yes, of course.

Q. You thought they would? A. Yes.

Q. Are you clear in that? A. Yes.

Q. Well, then, when you considered the matter of getting back the property, the property that you had deeded to them, you understood that if you took it back the corporation would fix the price on it?

A. Yes.

Redirect Examination.

Mr. AYDELOTTE.—Q. Did you, Miss Chapman, receive from Mr. Johnson or from any one else—

The REFEREE.—(Int.) I am not sure that the witness understood counsel’s last question. Counsel’s last question related to getting back the property that she had sold.

A. Yes. [71]

Q. That you sold to the Realty Company?

A. Yes.

Mr. CLARK.—You understood that my question related to the return of the property that you had turned over to them?

A. Yes.

(The last question and answer of the last cross-examination read.)

The WITNESS.—Yes, I meant that.

Mr. AYDELOTTE.—Q. Now, that there may be no mistake about this, let me put the question to you,

(Testimony of Hattie Hardesty Chapman.)

Miss Chapman: At the time you talked to Mr. Johnson about the possibility of exchanging or transferring some property for these certificates, or your claim against the corporation, was that not after default had occurred in the payment of interest to you?

A. Yes.

Q. And was that not after the matter had been placed with your attorney for adjustment?

A. Yes.

Mr. CLARK.—Now, your Honor, that there may be no question about this record, if counsel, in anything that has been said between this witness and Mr. Johnson will bring out the details showing that what was said related to a compromise, I have no objection. But I want to make our position clear, and that is, that we contend that there was not a single thing in any conversation between counsel and the Realty Union, between his own client and himself or between his client and the Realty Union that was indicative of anything more than an adjustment. But I have no objection to his introducing testimony that tends to show a compromise. But so far, it is just a plain, ordinary discussion of exchanging certificates for real property.

Mr. AYDELOTTE.—I will state for counsel's benefit that I intend to testify on that point, because I was the one that conducted the most of the negotiations with Mr. Johnson. And it was directly upon that point that I asked my question, and counsel objected and the objection was sustained. Because

(Testimony of Hattie Hardesty Chapman.)

my questions were all directed to the attempt to compromise this case. [72]

The REFEREE.—Q. In regard to the question which was read to you by the reporter you spoke of endeavoring to obtain a return to you of the property that you had sold to them.

A. Yes.

Q. You have also answered that you considered that they had a right to fix the price. Am I to understand that if the price that they fixed exceeded the amount that they were to pay you for the property, that you would have to agree to such price as they might fix for the property in order to obtain the return of it to you? Do you mean to answer that?

A. No, I thought—I just wanted to get my \$19,000.

Q. I want to know if you understand the question that was asked you. You have answered that you understood that they had a right to fix the price of the property in the event of a return to you of the property that you had sold.

A. Well, I tell you, I wanted to get this property back, and I asked Mr. Johnson if I could not get it back, and I thought I would get my attorney and he would arrange things for me—arrange the price.

The REFEREE.—It is perfectly clear that the witness does not understand what she has answered.

Recross-examination.

Mr. CLARK.—I think she does. I will ask her a question.

(Testimony of Hattie Hardesty Chapman.)

Q. Your counsel asked you this, Miss Chapman, whether in the event that the Realty Union traded back property for certificates—

The REFEREE.—(Int.) Her property. The question related to her own property.

Mr. CLARK.—I will lead up to it.

Q. You understood that if you traded your certificates for Realty Union property, that the Realty Union would fix the price on the property which it turned over for the certificates, didn't you? You understood that?

A. Well, I expected to get the property back. That was all. I expected to get the full value. I didn't [73] expect to get just part of the \$19,000.

Q. Well, now, let us make this very simple.

A. (Int.) I expected to get what I sold it for. That is all.

Q. Did you understand your counsel when you answered him in effect that you did understand that if these certificates were turned in for property, the Realty Union would fix the price on the property exchanged? Did you understand—

A. (Int.) I don't mean just this property now. I mean that which I sold them. I wanted to get a list of their property. They would naturally make out the prices that they would charge, wouldn't they? And then I would consider whether it was worth \$19,000. Supposing they had my piece of property and they said it was worth \$19,000. If I didn't think it was worth \$19,000 I would not consider it.

Q. You have now answered exactly as you did

(Testimony of Hattie Hardesty Chapman.)

answer your counsel, that if they fixed up a list—

The REFEREE.—(Int.) Her answer is perfectly clear as to that.

Mr. CLARK.—Q. Now then, you knew this, Miss Chapman, that if you in 1915, two or three years after you had sold this property, went to the Realty Union for the purpose of getting back the property that you had turned in to them, that they would likewise fix the price, fix some price upon that property at which they would exchange it to you for certificates, didn't you?

A. Well, I wanted to get the property back.

Mr. CLARK.—Mr. Reporter, please read the question. (Question read.)

A. Why, naturally they would put a price on the property. I thought that.

The REFEREE.—This question relates to the particular property that you sold.

Mr. CLARK.—Q. If that was bought back by you for your certificates you expected they would fix a price on it, didn't you?

A. Why, I expected to get back my price. [74]

Q. You stated to the court three or four times, Miss Chapman, that if the Realty Union furnished you with a list you expected it would fix prices on its property? A. Yes.

Q. And that you would take a piece of property if you thought the price was desirable? You understood that would apply?

A. I naturally would want to get the value of my

(Testimony of Hattie Hardesty Chapman.)

\$19,000. I would not want to take \$10,000 worth of property for \$19,000.

Q. Well, in the event of their turning back to you the piece of property that you had turned over to them, did you expect that they would fix the price upon it as a trading property? Did you expect that they would deal with that property just like any other property?

A. I thought they would give me back my property. Why shouldn't they?

Q. Yes. Did you expect they would give you back that property for which you claimed the price was \$35,000, for \$19,000 in certificates?

A. They would give the value of my money. Perhaps they could hold the mortgage on it. I didn't want them to give me \$35,000 on it when they had paid off this mortgage.

Q. Supposing this property had increased in value two fold and you had tendered the certificates to them in exchange for this property, would you have expected them to fix the price upon it?

A. What I wanted them to do was to give me a mortgage on it for \$19,000. That is what I wanted. Then they could sell it for what it was worth. If it was worth very much more they could take what they sold it for and give me my \$19,000. But I wanted a mortgage on that property, on that particular piece of property.

Q. Now, in the event that you traded your certificates for this particular piece of property did you expect that the Realty Union would fix the same

(Testimony of Hattie Hardesty Chapman.)

price upon it at which they had taken it from you?

A. That is the way I thought. I thought I would get it back or they would give me a mortgage. [75]

Q. Didn't you answer repeatedly that you enquired as to whether you could trade back for this particular piece of property?

A. I meant by that that I wanted to get a mortgage on it; get my claim on it that way.

Q. Had you been to see an attorney before you suggested getting a mortgage upon it? A. Yes.

Q. And had your attorney advised you that it would be feasible to get a mortgage upon it?

A. I think he had.

Q. Didn't your attorney tell you that there was not much use getting a mortgage on it if you had preferred vendor's lien?

A. Well we were trying to settle this thing up.

Q. Well, when you were talking about getting a mortgage on it, did you think at that time you had a vendor's lien on this property?

A. I don't think I knew about it, about a vendor's lien.

Q. You had been to see your attorney all this time and he had told you to go and demand a mortgage, hadn't he? A. I don't know.

Q. Do you now say that you didn't go to see your attorney and that that attorney didn't tell you to ask for a mortgage before you requested it?

A. I had been to see my attorney before, yes. I know I had.

Q. Do you now say that your attorney did advise you to get a mortgage?

(Testimony of Hattie Hardesty Chapman.)

A. I didn't ask him for a mortgage at that time. I said that I wanted to get my property back.

Q. Do you now say that your attorney did not advise you to ask for a mortgage?

A. No, my attorney did not do that.

Q. Did you ask Mr. Johnson for a mortgage?

A. No, I don't think I did, myself.

Q. Do you now say that you didn't ask Mr. Johnson for a mortgage?

A. I asked Mr. Johnson for this: if I could not get my property back; and he said he wanted to hold that property. [76]

Q. Now then, if you didn't mention the mortgage why was it that you were willing to take the property back in exchange for your certificates?

A. Why, if he had let me have the property I would have given him back the notes, naturally.

Q. Did you expect that he would ask for these certificates then if you did get this property back? Did you suggest that?

A. Why, I simply wanted to get the property back.

Q. Did you have in mind the turning in of these certificates if you did get your property back?

A. Yes, I asked him if he was going to pay me anything on this note.

Q. Did you have in mind the turning in of these certificates if you got the property back?

The REFEREE.—Yes, she said that she had in mind the turning in of the certificates if she got the property back.

Mr. CLARK.—Q. If these certificates were turned

(Testimony of Hattie Hardesty Chapman.)

in did you expect that the Realty Union would fix some price on this property?

Mr. AYDELOTTE.—I submit that the question has been answered.

A. I said that I expected to get my \$19,000 value out of the property, and I didn't expect to get any more than that.

Mr. CLARK.—Q. Then you did expect that the Realty Union would fix a price upon that property if it was turned back to you, didn't you?

A. I thought probably they would, but I didn't think anything about that. All I struck them for was, I wanted to get my \$19,000 out of it, and I considered that I should get that out of it, because the property was certainly that valuable.

Q. Did you expect them to return the whole of it to you?

A. I expected to get \$19,000 and I didn't want any more.

Redirect Examination.

Mr. AYDELOTTE.—Q. Is it not a fact, Miss Chapman, that at the time you had this talk with Mr. Johnson that Mr. Johnson had told [77] you there were some encumbrances on this property?

A. Yes.

Q. Did you expect Mr. Johnson to give you \$40,000 worth of property for \$19,000?

A. No, I did not.

Q. Isn't it a fact that you asked Mr. Johnson about getting this property back, having in mind the possibility of an amicable settlement of this whole business? A. Yes.

(Testimony of Hattie Hardesty Chapman.)

Q. Isn't it a fact that your answer to the former question with relation to fixing the price upon the property was with relation to your \$19,000, together with whatever mortgage there might be upon the property, and then making an adjustment of the whole thing? A. Yes.

Recross-examination.

Mr. CLARK.—Q. In other words, if the property had gone up so that it was five times as valuable as it was before, you expected that the \$19,000 and the amount of the mortgages would be deducted from the value of the property, didn't you?

A. I expected only my \$19,000, because I sold to them for a certain amount and I didn't expect any more from them.

Q. You answered your counsel that you didn't expect \$40,000 for \$19,000? A. Yes.

The REFEREE.—I think, counsel, that you will not accomplish any more by pursuing this line of examination.

Mr. CLARK.—Let me ask this question, finally:

Q. If the property had gone up so that it had become worth a hundred thousand dollars, you would not have expected the return of that property to you, for the certificates, would you?

A. I would have expected \$19,000 out of it.

Q. If it had been turned back you would have expected \$19,000 worth for it?

A. I would have expected \$19,000 and they would be entitled to the rest. [78]

Q. Then you would have expected that the Realty

(Testimony of Hattie Hardesty Chapman.)

Union, in making its adjustment with you, would fix some price upon the property?

A. I don't see what that has to do with it. All I wanted was to get my money.

Mr. AYDELOTTE.—Q. Miss Chapman, is it a fact that these conversations with Mr. Johnson were before or after you consulted your attorney with reference to a possible compromise settlement of this whole matter?

A. They were after, I consulted my attorney.

Testimony of W. M. Aydelotte, for Claimant.

Testimony of W. M. AYDELOTTE, called for claimant, sworn.

The WITNESS.—I will state that as the attorney for Miss Chapman I made at least a half dozen trips to the office of the Realty Union and had conversations with Mr. Johnson relative to a compromise settlement of this whole affair, so as to avoid any litigation or entanglement. Mr. Johnson himself proposed to me, or made the proposition that we accept a note and mortgage due in three years, on this identical property. He claimed the property was worth more—was worth some fifty or sixty thousand dollars. I said, "Will you let me have some lists of those various properties which you have for sale?" And I says, "I will look over those lists and if anything appears to be right, and we can in that way effect an amicable adjustment of this matter which is satisfactory to Miss Chapman, we will see what can be done"; that I would much rather have the whole thing adjusted that way than to

(Testimony of W. M. Aydelotte.)

have it strung out in a lawsuit. The interest was past due, and I demanded the interest but it was not forthcoming. Mr. Johnson told me the condition of the affairs of the corporation, and told me very frankly that they were in a bad way. And we had several meetings. One meeting we had in my office when Mr. Grace was present, at which the proposition of the mortgage [79] was discussed, and he told me the mortgage was on these two pieces of property, not on the one piece described in the complaint. And then coming to those conversations, and the counter propositions for a compromise settlement, on the 10th day of May or the 11th day of May, and a year ago last May I filed my suit on behalf of Miss Chapman to declare a vendor's lien on this property. All of the requests for lists of property were made at my suggestion, and with a view to a compromise of this situation. Any questions, Mr. Clark?

Mr. CLARK.—Q. Have you any memorandum of when Miss Chapman first came to you?

A. Why, I think, Mr. Clark, it was along about the first of March; somewhere in there. It seems that it was either shortly before or after the first of March. I see by the date of this letter of March 15th with reference to the statement that the payments would be withheld. It is either before or after that date.

Q. When you asked Mr. Johnson for a list of this property what made you think you were entitled to ask for a list?

(Testimony of W. M. Aydelotte.)

A. I recognized and thought at the time that there would be no reason for asking for lists by virtue of any right; that that particular clause in the certificate didn't amount to anything, because it was not a right which we could exercise. It was a right which the corporation could exercise at its own pleasure and profit, but it was of no value to the promissory note holders.

Q. Did you tell your client that before you went over and demanded a list?

A. I don't know whether I did or not. I know that I had never explained the situation fully to my client.

Q. Had you read that particular clause in the investment certificate before you went over and demanded a list?

A. I certainly had.

Q. How many times?

A. Maybe two or three times.

Q. Was it because of that provision in the investment certificate [80] that you did go over and demand a list?

A. No, not any more than if you had owed me a thousand dollars and could not pay me, I might have gone to you for some of your property to meet the indebtedness.

Q. Did you ever make the suggestion to Mr. Johnson that the document on its face said that you had a right to exchange it for real property of this company that might be held for sale ?

(Testimony of W. M. Aydelotte.)

A. Yes, I made such a suggestion to Mr. Johnson, with this coupled to it, that the right didn't amount to a hill of beans, because the company had it in its power at all times to fix the price of the property.

Q. When you asked for a list did you tell the company that you would like to have a list of property, and to have them specify the prices that might be put upon it, or the prices that it might be held at?

A. Yes, and I told him to make the prices the best he could, because of the accrued interest that was due to Miss Chapman, and I wanted to favor her all I could.

Q. Well, at the time of these several conversations did you or your client, Miss Chapman, demand any lists?

A. I never demanded any lists.

Q. When you asked for a list you asked for prices?

A. I expected that they would give me prices.

Q. Did you as an attorney consider at that time the compromising of this case, or of this lady's claim, without making a demand of that sort? You had a list of these properties held for sale. Would you have called it compromising the case if you had traded off \$19,000 in certificates for property held at \$19,000? A. Yes.

Q. In what way would such a deal have departed, in your judgment, from the language of the investment certificate?

A. I will tell you why. Because Miss Chapman had the right absolutely to rely upon [81] the promise to pay the \$19,000 in money. She was not

(Testimony of W. M. Aydelotte.)

obligated to take one single piece of property; and the surrender of this promissory note, or of this claim, against the corporation for \$19,000 in property, and the taking of any property for it, or the taking of anything except money, would be a compromise of the case.

Q. Even though it had been exercised in accordance with the terms of the investment certificate?

A. Yes, sir; because that was merely a method suggested to discharge the obligation. And that method exists independent of any contract.

Q. Would you say that it existed independent of any contract if at any time the Realty Union had held for sale, in accordance with the terms of its contract, lists of property? A. Yes, sir.

Q. As an attorney at law were you not familiar with the fact that specific performance of a contract can be enforced even though the right to enforce specific performance depends upon the selection of a particular piece of property by a person claiming to have a right to have a specific performance?

A. That may be, but still, when the price of the property is left to arbitrary discretion of the owner, the one who holds it, it looks to me a bait to get somebody to buy these promissory notes without any value whatever.

Q. Don't you know that the rule is that specific performance of a contract must receive a fair construction, and that no Court would ever sanction the fixing of an arbitrary price, as you call it, at an exorbitant figure, in the event that you had gone to

(Testimony of W. M. Aydelotte.)

court on a suit for specific performance?

A. That is true, to a certain extent. But the Court will also assume that an arbitrary price will be fixed.

Q. When you went in there you say you went in by the authorization of your client. Didn't you find that you were making a demand that you were entitled to make under the strict terms of the investment [82] certificate, when you were asking for a list of property?

A. I say I told Mr. Johnson that that particular provision in there didn't amount to a hill of beans, in my opinion, and that is my opinion still.

(Further hearing adjourned to Wednesday, April 5, 1916, at 1 P. M.)

Wednesday, April 5, 1916, 1 P. M.

ARMAND B. KREFT, Referee in Bankruptcy,
Presiding.

APPEARANCES:

WM. M. AYDELOTTE, Esq., Attorney for Claimant.

GEORGE CLARK, Esq., and A. H. BRANDT, Esq.,
Attorneys for Trustee.

**Testimony of Hattie Hardesty Chapman (Resumed
Cross-examination).**

Cross-examination of HATTIE HARDESTY
CHAPMAN (Resumed).

Mr. BRANDT.—Q. Miss Chapman, the other day you said in the course of your examination that there was some friend with whom you advised with ref-

(Testimony of Hattie Hardesty Chapman.)

erence to this transaction with the Realty Union. That was true, wasn't it?

A. Yes.

Q. Was that individual William C. Wallace?

Mr. AYDELOTTE.—We object, if the Court please.

A. Must I tell his name?

The REFEREE.—Do you intend to call the party as a witness in the case?

Mr. BRANDT.—Possibly. I will connect it anyway.

Mr. AYDELOTTE.—I can't see the materiality.

The REFEREE.—It may be material. There is possibly a question of intent here, which may make it material as showing the extent of the witness' knowledge as to the so-called investment certificates of the Realty Union. The issue presented here seems to be as to whether or not this was simply taken as evidence of payment, or promise to [83] pay rather, the purchase price, whether, from the trustee's standpoint it was an investment in their investment certificates. In that view her knowledge concerning the Realty Union may be important. I overrule the objection. A. Yes.

Mr. BRANDT.—Q. Did he act in your behalf in negotiations with the Realty Union?

Mr. AYDELOTTE.—I cannot think that that is material. It is calling for an opinion.

The REFEREE.—Overruled. You may answer that yes or no.

Mr. BRANDT.—I withdraw the question and will

(Testimony of Hattie Hardesty Chapman.)

put it in this way: Did Mr. Wallace see the Realty Union for you with reference to the sale of this property?

A. Well, he told me that they wanted to buy a lot of land, and he asked me if I wanted to sell to them.

Q. Did he do anything further in reference to the matter than that?

A. No, I can't say that he did anything further. I thought that over, and then I said yes, I would sell it to them.

Q. Do you recollect who arranged the sale to the Realty Union?

A. Well, he told me the price they were willing to pay me.

Q. Had he gone to them? Had you advised with him first, before he took it up with the Realty Union?

A. No, but he simply told me that he knew I had this land, and if I could find a purchaser I would sell it, and he told me about the Realty Union, saying that they would buy it from me.

Q. The first time that he spoke to you with reference to the matter, did he state the price at that time, or were there any subsequent negotiations?

A. I don't remember exactly. I think probably he asked me—

Mr. AYDELOTTE.—We object to probabilities. Anything that was done, but not probabilities. [84]

The REFEREE.—The witness is volunteering a statement.

A. Well, he asked me if I wanted to sell to them, and I don't remember whether it was then, whether I

(Testimony of Hattie Hardesty Chapman.)

told him to find out how much they would give. I have really forgotten that.

Q. Do you recall going to some office of the Realty Union and closing the sale?

A. I didn't go—I don't think I went up—I can't remember. What is the question?

Q. Do you remember going to the office of the Realty Union with Mr. Wallace before the settlement? A. No, I don't think I did.

Q. Where were the certificates of stock delivered to you?

Mr. AYDELOTTE.—We object. There were no certificates of stock.

Mr. BRANDT.—I beg pardon. Investment certificates. Where were they delivered to you?

A. Why, I got them up to Mr. Johnson's office.

Q. They were taken up to Mr. Johnson's office, and you were up to Mr. Johnson's office?

A. I was up there the day I got them, certainly.

Q. At the time did you talk to Mr. Johnson with reference to the affairs of the company and the condition of the company and the character of these investment certificates?

A. Well, I told him—I don't know. We had a talk.

Q. How long was the conversation? Do you recollect?

A. I had known Mr. Johnson a long time. We stayed up talking a long while, but I guess it was not all about the Realty Union. I naturally told him I guessed it was all right. I asked him if I could not

(Testimony of Hattie Hardesty Chapman.)

get my money before ten years. He said no, I could not do that. I told him I hated to wait that long.

Q. Miss Chapman, at that time did you read the certificates?

A. If I remember correctly, I think Mr. Johnson read them over to me.

Q. You think he read them over to you at that time? A. I think he did. [85]

Q. Did you make any inquiries at that time of Mr. Johnson about the company and its affairs?

A. No, I don't think I did, because I had thought about the matter and I knew that they were all good, reliable men. I knew Mr. Johnson. I had known him for a long time. I knew he had a fine reputation. And Mr. Woodworth had a splendid reputation. He was at the head of the company; so I don't think I said anything more about it, because I thought it was all right.

Q. Had Mr. Johnson advised you to proceed and close the matter, close the transaction, prior to that time?

Mr. AYDELOTTE.—We object to that as incompetent, irrelevant and immaterial.

The REFEREE.—I don't see the materiality.

Mr. BRANDT.—Very well, then. What was the occasion of your going into the office of the Realty Union at that time?

A. I went up to get my note from them, that they were going to pay me; also to finish up the deal with them.

(Testimony of Hattie Hardesty Chapman.)

Q. The deal had not been finished up to that time? It hadn't been closed?

A. No, that was the day it was closed.

Q. That was the day the deal was closed, and you had a conversation then with Mr. Johnson before the deal was closed? Is that correct?

A. Well, we were just talking there during the time he was getting the notes ready, and this man, if I remember correctly, signed the notes in another room, and then Mr. Johnson signed it there. I think he signed it in the room I was in, and we just talked about it.

Q. Did you sign a deed to the property?

A. I think I did.

Q. Do you recollect to whom the deed ran?

Mr. AYDELOTTE.—We object to that as incompetent, irrelevant and immaterial. [86]

The REFEREE.—The question is whether she recollects. She may answer the question.

A. I don't know. I didn't think anything about that, because I was selling to the Realty Union, and I didn't think how it read. Probably I didn't notice that particularly.

Mr. BRANDT.—Mr. Aydelotte, will you stipulate that the deed was made to Mr. Johnson?

Mr. AYDELOTTE.—I would rather have the deed produced. On the other hand, if any deed is offered in evidence, why, it does not make any difference, because the answer of the Realty Union admits the conveyance. That is an admitted fact in this case,

(Testimony of Hattie Hardesty Chapman.)

and it does not make any difference how many mesne conveyances were made.

Mr. BRANDT.—I think it might have some materiality.

Mr. AYDELOTTE.—With the suggestion of counsel that he amend his answer, it might be material. It is not an issue in this case now.

Mr. BRANDT.—Q. Miss Chapman, did you ever employ an attorney prior to the time that these negotiations were closed, to enquire into the affairs of the company for you?

Mr. AYDELOTTE.—We object to that as immaterial.

The REFEREE.—Overruled.

A. No.

Mr. BRANDT.—You had never employed an attorney at that time to enquire into the affairs of the company for you?

A. No.

Q. The only person who represented you, if anybody represented you, was Mr. Wallace? Is that right?

The REFEREE.—She has not testified that he represented her.

Mr. BRANDT.—I withdraw the question.

Q. When did you first employ Mr. Aydelotte in the case?

A. I can't remember just what month it was. I could not get my interest, so I thought I had better tell my troubles to somebody.

Q. That was subsequent to the closing of this

(Testimony of Hattie Hardesty Chapman.)

transaction? Subsequent to the closing of the sale?

A. Long subsequent to that.

Q. How long subsequent to that did you employ Mr. Aydelotte? [87]

A. Just the beginning of last year.

Q. At this time you recollect no attorney that you at that time employed and requested to look up the affairs of the company for you? A. No, sir.

Q. I understand you to say that Mr. Johnson read the certificates to you?

A. I am quite sure he did, if I remember I think he read them to me.

Q. Did he tell you at that time about the affairs of the company? Did he tell you at that time whether certificates of the character which he was reading to you were the kind that were generally issued by the Realty Union?

A. No, he didn't say anything about that.

Q. Did he tell you how many of those certificates were outstanding? A. No.

Mr. AYDELOTTE.—We object to that as immaterial.

The REFEREE.—The question has been answered.

Q. Did you know at that time how many certificates of this kind had been issued to other people?

Mr. AYDELOTTE.—We object upon the ground that it is immaterial.

The REFEREE.—The objection is overruled.

A. I didn't think anything about it.

Mr. BRANDT.—Q. Did you know at that time,

(Testimony of Hattie Hardesty Chapman.)

referring to the time that you were closing the transaction with Mr. Johnson, that there were other properties that were being conveyed to the Realty Union beside the pieces that you were conveying to him or to the Realty Union?

A. I understood that there was.

Q. Did you understand also, Miss Chapman, that there were other certificates outstanding, also?

A. Well, I didn't think anything about it.

Q. When Mr. Johnson read the certificates to you did you consider them promissory notes, simply?

[88]

Mr. AYDELOTTE.—We object upon the ground that it is incompetent, irrelevant and immaterial.

The REFEREE.—The objection is overruled. The witness has referred to them throughout as notes.

A. Well, what they meant to me was that the Realty Union was going to pay me \$19,000 with interest in ten years. They were going to pay me this \$19,000 and my interest every month.

Mr. BRANDT.—Q. Was the fact that there was a provision on the certificates or in the certificates providing that they could be exchanged at their face value for property of the Realty Union, an element that you took into consideration in closing the transaction?

A. I didn't think anything about that. Because if I had wanted any property I would have kept what I had. I simply wanted to get the money out of them.

(Testimony of Hattie Hardesty Chapman.)

Q. The property that you had at that time, Miss Chapman, was encumbered by mortgages, was it not?

A. Yes.

Q. The other day you stated that you didn't recollect whether there had been any suit for foreclosure under mortgage, or any threatened suit for foreclosure. Is that your present recollection?

A. Well, I don't remember about that.

Q. Do you know who had the mortgage on the 153 feet from the corner?

Mr. AYDELOTTE.—We object to that as incompetent, irrelevant and immaterial. If there was a mortgage the record speaks for itself.

The REFEREE.—What is the purpose?

Mr. BRANDT.—Well, she said she would keep the property. I think it may be material, showing the reason she conveyed for the certificates.

The REFEREE.—The objection is overruled. Answer the question.

A. No, I don't remember.

Mr. BRANDT.—Q. And I understand also that you have no recollection [89] of any transaction with Mr. Whitehead with reference to that piece of property?

A. No, I have forgotten that.

Q. Your present recollection is, then, that there was no particular reason why you should sell the property except the reason that you got a fair price for it. Is that it? A. That is true.

Q. There was nothing in the nature of the encum-

(Testimony of Hattie Hardesty Chapman.)

branches on the property that made a sale pressing or urgent? A. No.

Mr. BRANDT.—I think that is all.

Mr. AYDELOTTE.—No questions.

Testimony of Roosevelt Johnson, for Trustee.

Testimony of ROOSEVELT JOHNSON, called for trustee, sworn.

Mr. BRANDT.—Q. Mr. Johnson, you are an officer of the Realty Union?

A. Yes, sir; I was.

Q. What position did you hold?

A. Vice-president and manager.

Q. Were you vice-president and manager in 1912?

A. Yes, sir.

Q. Do you know Miss Chapman, who was just on the stand? A. Yes, sir.

Q. Do you recall at this time the transaction with reference to the purchase of the property at Twenty-fifth and Telegraph? A. I do.

Q. Who first spoke to you with reference to that transaction, Mr. Johnson? A. Mr. Wallace.

Q. What is his first name?

A. William C. Wallace.

Q. What if anything did he say to you with reference to the property?

Mr. AYDELOTTE.—We object to that as irrelevant, incompetent and immaterial, calling for conversation outside of the *present* of the parties, and is not binding on Miss Chapman. He can state what he did or what action was taken; but not the conversation.

(Testimony of Roosevelt Johnson.)

The REFEREE.—The objection is sustained.

Mr. BRANDT.—Q. What did Mr. Wallace do with reference to the property, if anything, with the Realty Union? [90]

A. Mr. Wallace represented to me that—

Mr. AYDELOTTE.—I object to what he represented to him. That has nothing to do with this case.

A. I can answer that without giving his representations. Mr. Wallace arranged with Mr. Whitehead to take up the mortgages which had been foreclosed on the inside piece of property, 159 feet. The sale was about to be had. He arranged with Mr. Whitehead to pay off those mortgages. There were two mortgages. Whitehead, I believe, had bought the second one at a discount, and had paid the first and had made a fresh loan from the Savings Union to cover the ground, and agreed with Mr. Wallace for the account of Miss Chapman to hold that property for thirty days for the sake of a bonus that they agreed to pay him, and at the end of thirty days to turn it over to him or to keep it for them. But they didn't succeed in selling it during these thirty days. That was on the 159 foot piece of property, the inside property. The deed was made from Caro Mills to Mr. Whitehead because his name was used in the transaction. Then Mr. Wallace arranged with me to buy the corner at a certain price and to take up from Mr. Whitehead the inside piece. The corner I found had three mortgages on it, and I believe there were a lot of delinquent taxes on it, and we bought

(Testimony of Roosevelt Johnson.)

the whole piece, taking the inside property from Whitehead and taking up the corner, and I paid Mr. Dinkelspeil a second mortgage on the corner. I paid the Oakland Bank,—the City Bank of Oakland, is it? or something like that—I have forgotten the name—some \$2,400, being \$2,000 on the property, and interest and taxes, and paid Mr. Wallace for account of Miss Chapman, \$750, approximately, in cash. There was some balance to the transaction. It amounted to approximately that sum. Mr. Wallace intimated to me that he had acted—

Mr. AYDELOTTE.—(Int.) Don't state what Mr. Wallace intimated.

The REFEREE.—Just state what was said and done. [91]

The WITNESS.—I believe Mr. Wallace had an equitable interest in the corner.

Mr. AYDELOTTE.—I object to what the witness believes.

The REFEREE.—It will go out. Just state what was done about the acquisition of this property.

A. We made those payments and we assumed the \$5,000 mortgage to the Union Savings Bank and the \$2,000 to the Oakland City Bank, which was subsequently paid. We gave Miss Chapman \$19,000, in investment certificates and made a payment in cash of approximately \$750. I have forgotten the exact amount. Those negotiations were all had through Mr. Wallace, and he and Miss Chapman closed the transaction together in my office.

Mr. BRANDT.—Q. Did you acquaint Miss Chap-

(Testimony of Roosevelt Johnson.)

man as to the affairs of the Realty Union?

A. I acquainted Miss Chapman and also Mr. Wallace. He was directly familiar with the affairs of the company. He was an officer of the Realty Syndicate for some time. I showed him a financial statement of the company, showing the amount of obligations and the character of the obligations; the amount of the assets and the character of the assets, the character of the property. I gave all that information to Miss Chapman and to Mr. Wallace. One of the arguments I used generally in showing the character of the business of the Realty Union is to show—

Mr. AYDELOTTE.—(Int.) Did you make that argument to Miss Chapman?

A. Yes. I showed her that in one case she owns a specific piece of property which may not increase in value, but when she takes a certificate she has an interest in all our properties, scattered over a large district, therefore there is a large chance for an increase in the value, because if one piece does not increase another piece will. Miss Chapman was familiar at that time with the fact that the Realty Union owned a great many properties, for I showed to her that our holdings covered a large distribution.

[92]

Mr. BRANDT.—Q. Now, Mr. Johnson, when was this conversation with Miss Chapman? Do you recollect?

Mr. AYDELOTTE.—What conversation?

Mr. BRANDT.—That he has just testified to.

(Testimony of Roosevelt Johnson.)

A. At the time of the closing of the transaction, which was in 1912, some time.

Q. Who were present at the office at the time?

A. Myself; I think Mr. Wallace was there, and Miss Chapman, and very probably Mr. Woodworth. I am not sure of that. He was sitting there most of the time.

Q. At that time had the transaction been closed?

A. I am speaking now of the closing of the transaction; the exchanging of the papers. The transaction was settled on prior to that. When we came to exchange the papers is the period I am speaking of now.

Q. Is that the occasion on which you stated you told Miss Chapman about the affairs of the company and its assets and liabilities and properties, *et cetera*?

A. I believe that to be the occasion. If it were not, then it was prior to that; because I know I had that conversation with her before closing the transaction.

Q. Did she read the certificates?

A. I don't believe she took them in her hands and read them, but I remember reading them to her, because I always read certificates to persons before I delivered them.

Q. Immediately after the conversation you delivered the certificates to her? A. Yes.

Q. And she accepted them? A. Yes.

Q. Now, Mr. Johnson, did anybody else call on you with reference to the property at Forty-fifth and

(Testimony of Roosevelt Johnson.)

Telegraph before the transaction with Miss Chapman was closed?

Mr. AYDELOTTE.—We object to that as immaterial. No connection has been made.

The REFEREE.—The objection is overruled. The question is preliminary. [93]

A. An attorney from the Chronicle Building called on me, saying that he—

Mr. AYDELOTTE.—Just a moment. I object to that as incompetent, irrelevant and immaterial. (Question read.)

The REFEREE.—Answer yes or no.

A. I don't know.

Mr. BRANDT.—Q. Did anybody call on you representing or stating that he represented Miss Chapman?

Mr. AYDELOTTE.—We object to that as incompetent, irrelevant and immaterial.

The REFEREE.—The objection is overruled.

A. No, that was not exactly the statement that he made.

Mr. BRANDT.—Q. Explain your answer.

A. In my opinion he did.

Mr. AYDELOTTE.—I move that that be stricken out. It don't make any difference what the witness' opinion is.

The REFEREE.—Strike it out.

Mr. BRANDT.—Q. Just explain your answer.

Mr. AYDELOTTE.—Explain what? There is no question to answer now.

The REFEREE.—Explain your answer.

(Testimony of Roosevelt Johnson.)

A. An attorney called on me, stating that he represented a client that owned property on Telegraph and Forty-fifth. I understood that he was negotiating for a piece belonging to Mr. Wallace's sister, and my information was that he represented Mr. Wallace's sister, but afterwards I took it for granted that he represented Miss Chapman.

Mr. AYDELOTTE.—I move that that be stricken out.

Mr. BRANDT.—I have no objection.

The REFEREE.—It may go out.

Mr. BRANDT.—Q. Now, Mr. Johnson, at the time that the transaction for the purchase of this Telegraph Avenue property was closed, [94] approximately how much in investment certificates of the Realty Union was outstanding?

Mr. AYDELOTTE.—We object to that as incompetent, irrelevant and immaterial, whether it is one or one thousand, so far as Miss Chapman is concerned. It has nothing to do with the case.

The REFEREE.—The objection is sustained, unless you can bring the knowledge home to Miss Chapman.

Mr. BRANDT.—Q. During your conversation with Miss Chapman, Mr. Johnson, did you state to her anything with reference to the amount of certificates outstanding, of the company?

A. We issued a comprehensive statement which showed the exact amount outstanding, semi-annually. At that time the amount was \$600,000, probably.

(Testimony of Roosevelt Johnson.)

Q. You say you showed that statement to her?

A. Yes, sir.

Q. And the amount you think was about \$600,000 at that time? A. I think at least that.

Q. Did you state to her at that time anything with reference to the property owned at that time by The Realty Union?

A. Oh, I described the property and pointed out its location, yes, sir, and the number of front feet.

Q. Did Miss Chapman ask you any questions with reference to the certificates at that time, do you recollect?

A. Only to know how short a term she could get.

Q. And what she wanted to know was the shortest term she could get? Do you recollect what you told her? A. Yes, I told her ten years.

Q. And the certificates when written, were written for ten years? A. Yes.

Q. Were the properties that The Realty Union had at that time for sale?

A. Yes, they were for sale.

Mr. AYDELOTTE.—We object to that as immaterial.

The REFEREE.—Overruled. The question is answered.

Mr. BRANDT.—Q. Those properties were subject to the exchange provision [95] of the outstanding certificates?

Mr. AYDELOTTE.—We object to that as calling for the opinion of the witness, and not being an issue

(Testimony of Roosevelt Johnson.)

involved in the pleadings; immaterial and incompetent.

The REFEREE.—The objection is overruled.

A. Yes.

Mr. BRANDT.—Q. Do you recollect an occasion when Mr. Aydelotte, here, called on you to represent Miss Chapman? A. Yes.

Q. What did he state to you at that time?

A. He asked me for a list of properties, with the prices.

Q. For the prices and for a list of properties?

A. The prices and a list of properties, so that he could make a selection, so if he wanted to turn in the certificates he could do so.

Q. Did he state that he represented Miss Chapman? A. Yes, I think so.

Q. He referred to her? Is that correct? He referred to her certificates?

Mr. AYDELOTTE.—We object to that as leading.

Mr. BRANDT.—I will change the question.

Q. What did you do with reference to that request?

A. I told him it would be granted as soon as I had the prices for the properties; as soon as we had the prices for the land. As soon as the board had put prices on the land.

Q. Did the board subsequently meet? A. Yes.

Q. And were prices put on the land? A. Yes.

Q. Were the prices as fixed, a list of the prices fixed, given to Mr. Aydelotte?

A. I can't recollect. I believe so.

(Testimony of Roosevelt Johnson.)

Q. At any of the times that Mr. Aydelotte called on you was any mention made by him of a vendor's lien in favor of Miss Chapman's property on the corner of Forty-fifth and Telegraph? A. No.

Q. What was the first time that you heard of a claim of vendor's [96] lien on the property?

A. When I read the record in the paper; the record filed in the claim.

Q. You mean the filing of the suit? A. Yes.

Q. Of Miss Chapman against The Realty Union? A. Yes.

Q. Was any specific claim made by Miss Chapman or anybody in her behalf to you for this Forty-fifth and Telegraph property? A. No.

Q. Do you know where Mr. Wallace is now?

A. Living in Oakland. He gets his mail at 721 First National Bank Building. I don't know his Oakland address. Around Forty-eighth and Telegraph, I think.

Cross-examination.

Mr. AYDELOTTE.—Q. Mr. Johnson, do you say you gave me a list of those properties?

A. No, sir; I said that I would furnish you with a list of the properties. You were insistent on getting a list. There were lists furnished to anybody that asked for them. I said that I would furnish you with a list of the property and the prices as soon as they were out.

Q. Why do you think that you furnished me with a list?

A. Because you were applying for it. I naturally

(Testimony of Roosevelt Johnson.)

furnished them to the ones applying for them.

Q. You won't say, however, that you did give me a list?

A. No, I don't remember handing you one myself.

Q. Did anyone belonging to the company ever inform you that they had given me such a list?

A. I think not.

Q. Don't you know, as a matter of fact, Mr. Johnson, that I never was furnished with such a list? Don't you know of your own personal knowledge, that I never was furnished with any such list?

A. No, because my instructions would be to furnish you with a list if you asked for one; to furnish everybody with a list that asked for one. We would give them to anyone that asked for one. We would give them to any real estate agent. [97]

Q. Was the occasion when I asked you for a list, before the suit was filed?

A. You filed the suit before I had the list prepared. I know you didn't get it before the suit was filed, because it wasn't ready then.

Q. Do you know what date I filed the suit for Miss Chapman? A. No.

Q. I will refresh your recollection a little, Mr. Johnson. I will call your attention to a fact which I think counsel will admit, that the suit was filed the 11th day of May, 1915. Is that right?

Mr. BRANDT.—I presume it is so if you state so, Mr. Aydelotte.

A. Then I will have to correct my testimony, if you will permit me, your Honor, because the list

(Testimony of Roosevelt Johnson.)

was prepared before that. Although the list may not have included that particular property before that. When we prepared the list I excluded certain pieces which we proposed to hold permanently for an increased value. One was the corner on Telegraph and Forty-fifth; one was a gore piece and one was a piece on Broadway between 20th and 22d. We expected to hold those, but subsequently, however, we had very high offers for them and we sold them, sold the Broadway piece, and we sold the other two pieces, but we could not deliver them because you had filed your lien at that time and had tied up the property. You had filed your lien and tied up the property and somebody else filed an attachment and had tied up the gore property, so we never delivered them.

Q. You say a deed was made for those Chapman pieces? A. Yes.

Q. Was that deed made to the California United Farms Company? A. Yes.

Q. Since you have refreshed your memory, Mr. Johnson, and you now state that the list was made before I filed the suit, I will ask you to state when you made up the list of these properties for sale?

A. I believe it was approximately April 15th.

Q. I don't wish to take any advantage of you, Mr. Johnson, and I will ask the Court if I may see the exhibits, the letters. [98]

A. It can very easily be verified from the date of the first sale, because the sales were waiting for the list to be made up. The date of the deed in the mat-

(Testimony of Roosevelt Johnson.)

ter of our first sale would evidence the date of the passing of the schedule. The schedules were all included in the minutes, too. The minute-book will show when the schedules were made.

Q. You say that your best recollection is that it was about April 15th that these lists were prepared?

A. Yes.

Q. I will ask you if that is your signature to that letter, Mr. Johnson?

A. Yes, that is my signature.

Q. I will ask you to look at the date of that letter. Is that correct?

A. Yes, March 15th. I don't know anything about that, but the date is there.

Q. Did you sign that letter? A. Yes.

Q. I ask you whether it was before or after March 15th, if you can recollect, that I called on you and ask you for this list of properties?

A. I can't recollect. I believe it to be after that.

Q. You think it would be after this? A. Yes.

Q. Do you know when any lists were made out?

A. The minute-book will show that; the dates of the schedules. They are all passed through the board.

Mr. BRANDT.—I will bring the minute-book and fix the date exactly.

The WITNESS.—I will refer to the minute-book and correct any failing in my memory to-morrow.

Mr. AYDELOTTE.—Q. Do you remember the conversation when I first called on you, Mr. Johnson, with reference to this property? A. Yes.

(Testimony of Roosevelt Johnson.)

Q. Is that the conversation that you say I asked for a list of properties and the prices, and said that I wanted to exchange some certificates for them?

A. I don't know that that was the first conversation we had. [99]

Q. Will you kindly repeat that conversation?

A. No.

Q. As near as you can?

A. I would not undertake to do it.

Q. Give the sum and substance of it.

A. I could not do that on the first conversation. The second was not anything about—we conversed about different subjects; the sum and substance of your purpose in calling, as far as I can recollect, was to get for Miss Chapman something more definite as security, than the certificates. That was your purpose in calling. You asked for a list. You asked for land which was not encumbered, and I told you that if you would wait until we could make a good sale we could pay off these mortgages and then I would give you clear land.

Q. Did I ask for any particular land?

A. No, I think not.

Q. Then how do you mean that I asked for land which was not encumbered?

A. It was all encumbered.

Q. I asked for a list of land of various sizes and different prices?

A. Yes, you had specified one piece which would make up, I think, part of the \$19,000, and then you

(Testimony of Roosevelt Johnson.)

asked for two pieces which would make up the \$19,000.

Q. In other words, one list of property for \$10,000 and another list for \$9,000 and another list of property for \$19,000? Is that correct?

A. Along those lines, yes.

Q. What did I state to you with reference to the reason why I asked for such lists?

A. I don't recollect that. I don't know why you asked me. I don't know now. I may have known then.

Q. Did I give any reason for asking for the lists?

A. I don't know.

Q. Did I not ask you for a statement of the condition of the company? A. I don't know.

Q. Did you give me a statement of the condition of the company? A. I believe so. [100]

Q. Did you voluntarily give it without my asking for it?

A. I believe so. That was our regular custom.

Q. Do you remember what kind of a statement that was that you gave me?

A. That was a printed statement; a printed statement that we had published probably prior to your calling.

Q. It was the 1914 statement; December 31, 1914?

A. I presume so.

Q. I will ask you if that is the statement. (Showing.)

A. That was our statement published under date of December 31, 1914. No doubt it was the one fur-

(Testimony of Roosevelt Johnson.)

nished you at that time.

Q. I ask you if it is not a fact, Mr. Johnson, that at that time I told you that I understood that you and Miss Chapman had been good friends in the past, and that I didn't want any lawsuit about the matter; that your company was in arrears for interest and that I wanted a fair deal, or words to that effect, and that I didn't want any suit, and that if we could possibly settle this matter without a suit in any way that would be fair to Miss Chapman, I desired to do so? In other words, generally was not that the effect of my conversation?

A. Yes, that is what you said.

Q. Was there more than one conversation, Mr. Johnson? A. Yes.

Q. Were there any conversations in my office?

A. Yes.

Q. When? Before or after the suit was filed?

A. After.

Q. After the suit was filed? A. Yes.

Q. What was said in those conversations bearing upon this same matter?

Mr. BRANDT.—We object to that as immaterial.

The REFEREE.—The objection is overruled.

A. I think nothing was said bearing on this matter. I discussed with you the value of the vendor's lien and you showed me the code provisions. I think that was the subject I took up with you at [101] that time. I believe you offered to release the vendor's lien if I gave a mortgage on the property for the amount of the certificates which our

(Testimony of Roosevelt Johnson.)

board was unwilling to do.

Q. Did that suggestion come from me or from you? A. I don't know.

Q. Isn't it a fact that that proposition came from you, Mr. Johnson? A. I don't know.

Q. And that proposition came after the suit was filed?

A. It came after the suit was filed; yes.

Q. Was there any talk like that before the suit was filed? A. I think not.

(Further hearing adjourned to Thursday, April 13, 1916, at 2 P. M.)

Thursday, April 13, 1916, 2 P. M.

ARMAND B. KREFT, Referee in Bankruptcy,
Presiding.

APPEARANCES:

GEORGE CLARK, Esq., and A. H. BRANDT,
Esq., Attorneys for Trustee.

WILLIAM M. AYDELOTTE, Esq., Attorney for
Claimant.

Testimony of William C. Wallace, for Trustee.

Testimony of WILLIAM C. WALLACE, called
for trustee, sworn.

Mr. BRANDT.—Q. Where do you reside, Mr. Wallace? A. In Oakland.

Q. Do you know the claimant, Miss Chapman?

A. I do.

Q. Do you know Mr. Johnson of the Realty Union? A. Yes, sir.

Q. Did you at any time, Mr. Wallace, conduct any

(Testimony of William C. Wallace.)

negotiations with the Realty Union with reference to the sale of property at 45th and Telegraph?

A. I did.

Q. Will you kindly state the circumstances under which you conducted those negotiations?

A. Do you mean the immediate circumstances, [102] or the antecedents? How far back shall I go?

Q. Explain all the circumstances.

A. Well, the reason that I was connected with the transaction primarily was because the property was originally mine, and I had transferred it in two parcels. The greater part belonged to Miss Chapman and I still retained a portion, a segregated portion. That property had been for a long time under mortgage—in fact, parts of two mortgages and a deed of trust, for moneys which had been borrowed by me and which had been owing by me, and for which Miss Chapman had received no benefit; consequently I felt that it was incumbent on me to do whatever was necessary to protect the property in connection with the mortgages. While I was absent from the state the holder of the deed of trust, Mrs. Gardner of Oakland, whose note was for \$5000 and for interest gave notice of her intention to foreclose her lien. I happened to come back during the advertising period. I met her attorney by accident, and he confessed to me that he had commenced proceedings on the report that I was about to leave the country or something of that kind. The charge had been trumped up by somebody for a purpose, and the proceedings were

(Testimony of William C. Wallace.)

then about to be completed, so to protect myself and the property I had to scurry about. I managed to get an extension of time pending negotiations for either a refunding of the loan or for a sale of enough of the property to pay Mrs. Gardner. I was satisfied at the time and I am still satisfied that there was a conspiracy among the bankers and real estate men in Oakland to prevent me from getting the loan, and to force the property upon the market at a price very much less than its value, because I brought people from the outside, from distant counties, who were satisfied with the property, and after I consulted with bankers and real estate men they declined to make the loan, and I was then put in a position where I had to do something rather drastic, [103] and I applied to a friend of mine, Mr. Whitehead, who had been with the Realty Syndicate as agent. I was one of the founders of the Realty Syndicate and I knew him to be a very able business man and a man who was a stockholder in a number of banks and he occupied a position there that could give him a good deal of influence, and I told him that I wanted him to help me out of this scrap.

Mr. AYDELOTTE.—Now just a moment. Your Honor understands, I assume, that a statement like that comes in over our objection?

The REFEREE.—Yes, you have your objection. The statements seem to be harmless, but they will not be taken—

Mr. AYDELOTTE.—(Int.) Let it be understood that I will have my objection to all this, so I will not

(Testimony of William C. Wallace.)

have to interrupt the witness.

The REFEREE.—All right.

The WITNESS.—The proposition that I made to Mr. Whitehead was that he take whatever steps might be necessary to prevent the sacrifice of the property, either by getting a new loan or by stalling off Mrs. Gardner in her proceedings until I could sell the property, and as his recompense I would give him what I estimated to be the value of my equity in the property, and which I figured at \$2000. And he did—I don't recollect what he did, because that was his business, what he did. At any rate the matter was held in abeyance until, I think, in the early part of February—I think it was about 60 days at least, of time elapsed before I came to a settlement. I think so. In the mean time I had known of course about the Realty Union. I thought I knew a great deal more about it than it appears I did; so I offered Mr. Johnson, as nearly as I can recall, a proposition like this: that if he would purchase the property for the Union at a price to be agreed upon as being fair—and that was a matter that we could not decide in a minute—that if he would furnish money enough to pay off this indebtedness, that we, the owners [104] of the property—and I assumed to act for Miss Chapman because she was a part owner in the property, though she was not involved in the difficulties therein—that we would accept for the balance of the payment the certificates of the Realty Union. Well, the thing figured out, at any rate, to the leaving of a balance of \$19,700.16 over and above

(Testimony of William C. Wallace.)

the obligations which were deducted from the flat price that had been put upon it by the Realty Union or by Mr. Whitehead as coming to me. I have his original memorandum at home. If I had thought it would have been called for I would have brought it to-day. I have his original memorandum at home, of the deductions that he made.

Mr. AYDELOTTE.—Q. Can you find that?

A. I have it at home. I can find it.

Q. Can you produce that?

A. I can produce it. It left a balance of \$19,700 and some odd dollars. The Realty Union paid \$19,700.16 in cash and gave these certificates for \$19,000, of course at par. Those were made out to Miss Chapman, because it represented the value of her property. What was coming to me over and above the obligations, went to Mr. Whitehead as his reward for pulling us out of the hole.

Mr. BRANDT.—Q. Now, Mr. Wallace, you say that you had been connected with the Realty Syndicate? A. Yes, sir.

Q. How long had you been connected with the Realty Syndicate?

A. I was one of the founders of it; one of the incorporators of it.

The REFEREE.—Q. In your statement that you have just made you have not stated in what manner Miss Chapman became the owner of the property.

A. It was by deed of conveyance from me.

Q. What was the consideration?

A. Well, love and affection. We were engaged to

(Testimony of William C. Wallace.)

be married at that time, and it seemed to be quite sufficient consideration. [105]

Mr. BRANDT.—Q. Did you have an equity in the property? A. After the conveyance?

Q. Yes. A. No.

Q. Not after the conveyance?

A. Absolutely not.

Q. Well, you say you had been with the Realty Syndicate from the time of its inception. Were you familiar with the nature of the business of the Realty Union?

A. With the nature of the business, but not with the details.

Q. The Realty Union business was transacted in the same line as the Realty Syndicate?

Mr. AYDELOTTE.—Just a moment. I ask counsel not to lead the witness.

Mr. BRANDT.—I will try not to lead the witness.

Q. What was the nature of the business of the Realty Union as compared with that of the Realty Syndicate, as to character?

Mr. AYDELOTTE.—We object to that as immaterial.

The REFEREE.—Sustained.

Mr. BRANDT.—Q. Did you know the character of the business conducted by the Realty Union?

A. I did.

Q. Were you familiar with certificates of the character of those issued by the Realty Union?

A. Oh, yes, I had seen them and read them.

Q. Now had you, during the negotiations with the

(Testimony of William C. Wallace.)

Realty Union at any time consulted Miss Chapman about the negotiations?

A. Well, I can't say I had consulted her. I think rather that I took charge of the negotiations pretty much all myself, because it seemed to me to be the only thing to be done.

Q. Didn't she ask you anything about the certificates of the Realty Union?

A. You mean any specific questions? I can't recollect that. [106]

Q. Now, as to the nature of the obligations. I will withdraw the question. Did you make any enquiry concerning the assets and condition of the Realty Union at that time?

A. Some, yes. I considered that I was probably as good a judge of values in Oakland as there was at the time, in the real estate business; and from the statements they made of their obligations I was satisfied that their assets were sufficient to leave them in a sound position at that time.

Q. You saw some of their statements?

A. Oh, their statements were all published, and I think I saw all of them—at least, those that were published for circulation.

Q. Did the statements that you saw at that time, Mr. Wallace, show the amount of the outstanding certificates of the Realty Union?

Mr. AYDELOTTE.—Just a moment. The statements speak for themselves.

The REFEREE.—It is to arrive at the witness' knowledge. I will allow you to answer if you know.

(Testimony of William C. Wallace.)

A. My recollection is that there was a statement of the assets and of the liabilities, segregated into items. I think one of them was in the nature of encumbrances—one of the subtotals; but as to the details of that, I don't know what that included.

Mr. BRANDT.—Q. What did you know at that time with reference to the number and amount of the certificates that were outstanding, of the Realty Union?

A. I didn't know anything as to that, further than the aggregate amount that would be stated in those annual or semi-annual statements, giving the amount received from investors. That might have been on installments or upon fully paid-up certificates. There was no way from that to deduce the number of certificates that were paid up or were installment certificates. That was the aggregate amount that was received. That was all that they showed in their statements. [107]

Q. After you had investigated the condition of the company, Mr. Wallace, do you remember whether you talked it over with Miss Chapman? Did you talk the matter over with Miss Chapman?

A. Yes, I think I expressed an opinion. I don't know exactly. I can't say how or in what form I expressed an opinion.

Q. Do you remember what was the gist of that opinion?

A. That opinion was that the company was certain to succeed and to liquidate its indebtedness, including its certificates, according to their terms.

(Testimony of William C. Wallace.)

Q. What did you advise her with reference to the transaction?

Mr. AYDELOTTE.—If you advised her.

A. Yes, I advised her to accept the proposition which Mr. Johnson and myself, he representing the Realty Union and I representing the property, had arrived at with reference to this settlement of my embarrassment and the payment of the balance. I think she demurred. I think she demurred considerably to it. My impression is that I had to persuade her a little bit. Perhaps I had rather to ignore her objections. That is my recollection; because I knew there was some little feeling grew out of it.

Mr. BRANDT.—Q. Do you recall whether there was anything in the course of your conversations with her, prior to the time that the negotiations were closed, of any discussion with reference to the character of the certificates?

A. Make that a little more specific if you can. (Question read.) Oh, yes, I am quite sure that I explained the nature of the certificates, and my explanation was based upon the knowledge that I had acquired in connection with the same sort of certificates when I was familiar with the Realty Syndicate, which I had of course helped to promote, being one of the directors of the Syndicate and an officer of it; and I had remodeled [108] the certificate over and over again and we had got them into shape, such shape that we thought was explicit in the language that we wanted to convey, and Mr. Johnson, I think,

(Testimony of William C. Wallace.)

copied the form letter for letter.

Q. Do you recall whether Miss Chapman saw any of these certificates prior to the time—if you know, prior to the time that the negotiations were closed?

A. I don't know as she did. I am quite sure that I didn't show her any of the Realty Union certificates, if she did see any. She could have seen similar ones of the Realty Syndicate at prior days, in my office. But I am quite sure I didn't show her any Realty Union certificates.

Mr. AYDELOTTE.—Do I understand the witness to state that he did not show her any of the Realty Union certificates?

A. She may have seen a certificate of the character of those certificates, but I never showed her any Realty Union certificates, because I never had any myself.

Mr. BRANDT.—Q. You suggest that possibly she did; that she might have seen some Realty Syndicate certificates. Upon what do you base that?

A. Well, I was in the field for the Realty Syndicate for a long time, signing those Realty Syndicate certificates, I used to carry them in my pocket. It is quite possible that I might have exhibited them to her or to her family in general explanation as to the business I was transacting.

Q. Did Miss Chapman know that you were conducting these negotiations prior to that—prior to the time they were closed? A. Oh, yes.

Q. Did you communicate with her from time to

(Testimony of William C. Wallace.)

time with reference to it? A. Yes.

Mr. BRANDT.—I think that is all. [109]

Cross-examination.

Mr. AYDELOTTE.—Q. Mr. Wallace, I will ask you whether or not you thought at the time Miss Chapman was given these certificates, so-called, for \$19,000, that the money would be paid when they fell due? A. Unquestionably.

Q. You so thought? A. Absolutely.

Q. And you so advised Miss Chapman?

A. I so advised Miss Chapman. I so believed, surely.

Redirect Examination.

Mr. BRANDT.—Q. Was your judgment in that regard made up a great deal because of what you had seen of its realty property holdings?

A. Very largely.

Q. And did you talk with her over what the nature of the properties were, which caused you to arrive at the conviction that this concern would pay this or similar obligations?

A. Not with reference to the properties in general, no; with reference to the degree of care with which the properties had been bought, in my judgment, and the price paid, which left the institution in a solvent condition.

Q. You made mention of the fact that it did have various pieces of property, real property, which had been bought at conservative prices, did you?

A. That was the gist of my remarks, I think.

Q. You explained to her then, that the nature of

(Testimony of William C. Wallace.)

the property, with which you were familiar, and which was behind these certificates, was this real property that you have just mentioned, and which you felt was purchased with care?

A. No, I don't know that I talked exactly on that branch. That is a new thought that had not occurred to me. I don't think that I spoke along a line that would parallel that thought.

Q. What did you tell her?

A. I think, as near as I can recollect, [110] that I told her that the concern was expending money received from investors in such a way that it was not injuring its solvency nor its liability to meet its obligations when they should become due.

Q. Investing it in what?

A. In real estate, which was the only thing its charter permitted it to buy.

Q. Did you explain to her that it was a realty concern, investing the money of those who took these certificates, in real property?

A. I don't know whether I explained to her that, or whether that was a natural inference from the nature of the business.

Q. But that was understood in the discussion and the talk that you had with her?

A. I don't know what she understood, because I don't think I ever mentioned it.

Q. Did you mention to her the fact that these people were putting up this money, and that it was being invested wisely, as you say, in your judgment?

(Testimony of William C. Wallace.)

A. I think I did. I can't say now that I put it in that way.

Q. Well, did you tell her that you had been connected with the concern?

A. No, because I never was.

Q. Did you tell her that you had been connected with any similar concern? A. Yes.

Q. Did you tell her that the operation of this concern had any resemblance to the concern with which you had been connected?

A. Yes, I am quite sure I told her that.

Q. Did you tell her how the other concern operated? A. Yes, I think I explained that also.

Q. That is, that they disposed of these certificates, getting the money and putting it into real property?

A. Yes.

Q. You know that these certificates contain a clause to the effect that whenever the dividends paid its capital stockholders exceed six per cent, the certificate holder shall receive the benefit of the [111] excess paid—that they shall receive their share of it?

Mr. AYDELOTTE.—Wait a moment. We object to that question as leading.

Mr. BRANDT.—Q. Was that particular feature of these certificates pointed out to her by you?

A. No, I am quite sure that I didn't emphasize it.

Q. You are quite sure you didn't emphasize that point? A. Yes.

Q. Though you told her you had been connected with a previous concern that issued these certificates, and though you told her the holdings of

(Testimony of William C. Wallace.)

the Realty Union were in real property which was back of these investment certificates, you said nothing at all to her about the possibility of her getting anything out of these valuable properties more than a six per cent dividend?

A. Because I didn't expect she would.

Q. Did you expect that they would fail to live up to their agreement as to the payment of the six per cent?

A. No, but that is as far as I expected. That was my experience with the Realty Syndicate over a great many years.

Q. Did you get a list of properties of this concern?

Mr. AYDELOTTE.—When?

Mr. CLARK.—At the time this lady was receiving these certificates. A. I did not.

Q. How did you know that it was investing its money wisely, then?

A. Well, from the custom in their office of marking upon the map in black ink the properties that they had purchased, and those properties would show on the map that I occasionally saw when I went in the office, all of them being in very eligible situations; and the statement showed that the amount of money that had been paid, in the aggregate, was not, in my mind, disproportionate to the property [112] they had acquired. That was the inference.

Q. Did you know what these properties were?

A. Well, no; I knew that they were real estate.

Q. Didn't you know from your knowledge of real estate, what the nature of this property was?

(Testimony of William C. Wallace.)

Mr. AYDELOTTE.—In what respect, Mr. Clark? Whether it was high or low or was subdivision property?

Mr. CLARK.—He has already testified.

Q. You say these locations on the map. Now what prices? Were there any specific prices to that property? A. Yes, sir; the aggregate prices.

Q. Do you mean to say that all you knew was the aggregate prices of the entire holdings of the company? A. That is it.

Q. And yet you would undertake to say that they had bought wisely in buying those properties?

A. Well, I would hear the conversations in the office of the Oakland managers, and they appealed to my judgment as being indicative that what they did buy they could sell at a better price.

Q. Where, generally, did you understand these properties to be located?

A. Well, it was mainly along the main thoroughfares, the main avenues; largely on San Pablo Avenue or University Avenue, in Berkeley; and on the main avenues around the head of the lake, in Oakland; all very eligible places, in my estimation.

Q. Were you familiar with those values as a real estate man?

A. Yes, I knew the relative values of them.

Q. Did you know whether the properties that were being purchased were improved or unimproved? A. Yes, I knew that.

Q. What was your knowledge in that regard?

(Testimony of William C. Wallace.)

A. That they were unimproved.

Mr. CLARK.—That is all. [113]

Recross-examination.

Mr. AYDELOTTE.—Q. Mr. Wallace, what was the price that the Realty Union agreed to pay for this property to Miss Chapman?

A. On Telegraph Avenue?

Q. Yes. Forty-fifth and Telegraph Avenue.

A. It was somewhere in the neighborhood of \$32,000. I am not quite sure. I think it figured out something over \$140 a foot; \$142 or \$143 a foot.

Q. That was around when?

A. That was in 1912.

Q. In the spring?

A. The spring of 1912; before May, I think.

Q. I will ask you—I hand you this piece of paper, Mr. Wallace, and ask you if you have ever seen this paper before?

A. I don't recollect positively the paper, but the writing looks like mine. I should say that that is my writing.

Q. I ask you to examine the paper very carefully, Mr. Wallace, and see if you recollect that particular piece of paper.

A. I am satisfied that I made that memorandum.

Q. Does that memorandum refer to this property in question? A. Unquestionably, yes.

Q. Does that memorandum refer to the purchase price of that property?

A. It seems to be a computation based upon figures that I recollect having considered at that time

(Testimony of William C. Wallace.)

with reference to the piece of property, the hundred feet on the corner and 153 feet further up on Telegraph Avenue.

Q. Then I understand that the two pieces of property adjoin one another and are one piece of property?

A. They are one piece of property, but for some reason it has been divided into two pieces.

Q. I ask you, Mr. Wallace, whether or not that statement represents the amount of money which the Realty Union agreed to pay for this property, and the other figures represent the mortgages or liens at that time, which were estimated to be the amount of the mortgages or liens, against the property? [114]

A. That is my belief, but I won't be sure until I can compare these figures with the statement of Mr. Whitehead, because there is an item here marked "Whitehead" that I don't recollect any detail—that I didn't put in any details.

Mr. AYDELOTTE.—I offer this in evidence and ask that it be marked.

(Marked: "Petitioners' Exhibit No. 6.")

Mr. BRANDT.—We object to it as immaterial and unintelligible.

Mr. AYDELOTTE.—Perhaps I can identify it better.

Q. I will ask you, Mr. Wallace, if the name written on this statement, "Mr. Whitehead," is the name of Mr. Whitehead to whom you referred in your testimony as holding mortgages against the property?

(Testimony of William C. Wallace.)

A. Surely, yes, sir.

Q. I will ask you if the number of feet shown there, 150 feet on the corner, and 153 feet and I think 66 inches, would be the proper frontage of this property on Forty-fifth and Telegraph Avenue?

A. It would be the proper frontage; 150 feet and 153 feet on Telegraph Avenue.

The REFEREE.—It will be admitted and marked “Petitioner’s Exhibit No. 6.”

Mr. AYDELOTTE.—Q. I ask you to state, Mr. Wallace, if the memorandum marked “Petitioner’s Exhibit No. 6,” the memorandum which has just been introduced in evidence, approximately represents the purchase price of the property?

A. The result given there as 19,000 and some odd dollars is within a hundred or two dollars of the result of the various computations as to the Whitehead item. I say I can’t be positive, but I know that there was 19,000 and some odd dollars and the amount of certain taxes, that was left after Mr. Whitehead made his deductions, that was the amount that was shown there.

Q. I ask you if it is not possible at the time that memorandum [115] was made up, that the exact amount of those taxes and interest and so on was not definitely known, which might account for some difference?

A. It varies from day to day. The charges upon it vary from day to day. That would have to be compared.

Q. Then as I understand, Mr. Wallace, the Realty

(Testimony of William C. Wallace.)

Union agreed to pay the liens and taxes and encumbrances upon this property, and 19,700 and some odd dollars, the 700 and some odd dollars in money and the other \$19,000 represented by these certificates which I denominate promissory notes? Is that right?

A. Well, put the word "certificates" in, yes, that was the understanding. They didn't say anything about promissory notes. That is a matter of opinion.

Q. I very adroitly put the question in that way, "which I denominate promissory notes."

A. Yes, I will say yes to that.

Q. I show you Plaintiff's Exhibits No. 2 and 3 and ask you if those are the certificates which the Realty Union gave to Miss Chapman—

Mr. CLARK.—That is conceded, Mr. Aydelotte.

Mr. AYDELOTTE.—Just a moment. I have something else to ask about.

Q. —which the Realty Union gave to Miss Chapman in evidence of the balance of \$19,000 which they agreed to pay her.

Mr. CLARK.—We object to that as calling for a conclusion.

The REFEREE.—Objection sustained.

Mr. CLARK.—It is admitted they are the certificates.

Mr. AYDELOTTE.—Q. I call your attention, Mr. Wallace, to Plaintiff's Exhibit No. 1 and ask you to read it. I ask you, Mr. Wallace if this letter marked "Plaintiff's Exhibit No.1" correctly states the fig-

(Testimony of William C. Wallace.)

ures with reference to the final settlement?

A. It does, yes.

Q. With reference to the payment of the check of \$729.36? A. I saw that letter before, yes.

Q. Was this check made payable to you?

A. No, to Miss Chapman.

Q. Made payable to Miss Chapman?

A. Yes. [116]

Redirect Examination.

Mr. CLARK.—Q. You knew, Mr. Wallace, that the Realty Syndicate exchanged land for its certificates, didn't you?

Mr. AYDELOTTE.—We object to that as immaterial.

The REFEREE.—Objection sustained.

Mr. CLARK.—Q. Did you ever mention Realty Syndicate certificates in any talk that you had with the members of the family?

Mr. AYDELOTTE.—We object. The members of what family?

Mr. CLARK.—The Hattie Hardesty Chapman family.

The REFEREE.—I will allow the question provided it is connected in some manner with the character of the certificates issued in this case.

A. I don't think I ever mentioned them in connection with anything pertaining to this case.

Mr. CLARK.—Q. Well, not connected with this case. Did you have any talks with any members of the family, telling them anything about these Realty Syndicate certificates?

(Testimony of William C. Wallace.)

Mr. AYDELOTTE.—We object to that. The Realty Syndicate certificates have nothing to do with the Realty Union certificates.

The REFEREE.—I will allow the question.

A. Specifically I can't say that I did, but I think I did because I used to talk about my business trips that were in connection with these certificates, for the purpose of placing them.

Mr. CLARK.—Q. Well, from anything that you said in your conversations that you had with the Chapman family do you know whether they knew that those Realty Syndicate certificates were traded off for real property, to the Realty Syndicate?

Mr. AYDELOTTE.—I submit that the fact that they did or did not has nothing to do with this case, the Realty Union.

The REFEREE.—Mr. Clark, I think you should ask the direct question [117] as to getting these certificates of the Realty Union.

Mr. CLARK.—Q. You were not engaged in disposing of the Realty Union certificates?

A. I never was; no, sir.

Q. But you had disposed of a great many Realty Syndicate certificates? A. Yes.

Mr. AYDELOTTE.—We make the same objection.

Mr. CLARK.—Q. In the talks that you had with the family before this deal was closed did you tell them anything about the workings of the Realty Syndicate, in its issuing and taking up of these certificates?

Mr. AYDELOTTE.—We object to that as incom-

(Testimony of William C. Wallace.)

petent, irrelevant and immaterial. The conversations with the family might have been entirely out of Miss Chapman's presence.

Mr. CLARK.—Q. I might confine it to Mrs. Chapman and Miss Hattie Hardesty Chapman.

Mr. AYDELOTTE.—We make the same objection unless the conversation with Mrs. Chapman was in the presence of Miss Chapman.

The REFEREE.—You had better lay a foundation, showing that the operation of the Realty Syndicate and the Realty Union in regard to their certificates, the exchange of their certificates or the right to select real property in payment of the certificates was similar. Then I will allow you to ask what was said about the Realty Syndicate certificates. I will ask the witness this question:

Q. Mr. Wallace, was anything said to Miss Chapman about the fact that the certificates of the Realty Union, and their method of operation, including the exchange or the right to select real property in payment of these certificates, was similar to that of the Realty Syndicate?

A. I would have to say no to the question as a whole, because I never—the similarity that I may have called attention to was with reference merely to the obligations and its interest-bearing features. I never contemplated the exchange of [118] realty, because I never anticipated that and never knew it to be done up to that time by the Realty Syndicate, of my own knowledge.

(Testimony of William C. Wallace.)

Mr. CLARK.—Q. How long have you been connected with the Realty Syndicate?

A. From the start.

Q. How long? A. From the time it began.

Q. Don't you know of a great many people trading in their certificates for real property prior to 1912?

Mr. AYDELOTTE.—We object to that as leading and immaterial.

The REFEREE.—I sustain the objection.

Mr. CLARK.—Q. You didn't know of that, then?

Mr. AYDELOTTE.—The same objection.

The REFEREE.—Objection sustained.

Mr. CLARK.—Q. I will ask you specifically if you know of Dr. Warder Woodland prior to that time, trading in his certificates for real property?

Mr. AYDELOTTE.—We make the same objection.

The REFEREE.—The objection is sustained.

Mr. CLARK.—Q. Did you sanction the incorporation of that clause in these certificates, relating to the transfer of real property for the certificates?

Mr. AYDELOTTE.—We object to that question upon the ground that it is incompetent, irrelevant and immaterial.

The REFEREE.—Sustained.

Mr. CLARK.—Q. Were the certificates in the same form as the Realty Syndicate certificates? Were the Realty Union certificates in the same form as the Realty Syndicate certificates?

Mr. AYDELOTTE.—We make the same objection.

The REFEREE.—Sustained.

(Testimony of William C. Wallace.)

Mr. CLARK.—Q. Were the Realty Syndicate certificates talked over [119] at all by you in the the course of your conversations with Mrs. Chapman and with Miss Hattie Hardesty Chapman prior to the time of this deal?

Mr. AYDELOTTE.—We object to that as immaterial.

The REFEREE.—Objection sustained.

Mr. CLARK.—Q. The Realty Syndicate certificates were mentioned by you to Hattie Hardesty Chapman, were they not?

Mr. AYDELOTTE.—We object to that as leading.

The REFEREE.—The witness has stated to what extent. He stated that that was the entire extent of the interest-bearing features of the Realty Syndicate certificates that have been referred to.

Mr. CLARK.—Q. Do you know whether you mentioned to her the fact that the Realty Syndicate Company had taken up a great many of its certificates by turning over real property to the holders of those certificates?

Mr. AYDELOTTE.—We object to that as incompetent, irrelevant and immaterial.

The REFEREE.—Sustained.

Mr. CLARK.—Q. You read over all the provisions of those certificates, didn't you, before they were turned over to Hattie Hardesty Chapman?

A. Not the Realty Union certificates, no, I don't think I did; not at that time.

Q. At what time did you read them?

A. I had read them at some prior time, but not in

(Testimony of William C. Wallace.)

connection with that transaction.

Q. Didn't you look at the face of these at all?

A. I was responsible for the correction which I notice in the face of these; inserting the word "monthly" in place of "semi-annually" in the payment of the interest, so I must have read the face of it.

Mr. BRANDT.—Will you admit, Mr. Aydelotte, that the sum mentioned in this letter, Exhibit No. 1, the letter dated June 13, 1912, to Miss Hattie H. Chapman—that the amount mentioned in this letter, [120] to wit, taxes and releases, \$332.56; paid to Mr. Dinkelspeil, \$971; assumed at the Farmers & Merchants Savings Bank, \$3192.08; paid to Mr. Whitehead, \$11,000; represented the taxes and interest and principal of the liens on the property at that time, that was then due on the property?

Mr. AYDELOTTE.—No, I will not admit that all of that was due at that time.

Mr. BRANDT.—Well, I will not say due, but owing on the property; a lien on the property.

Mr. AYDELOTTE.—Practically so, yes, with this addition, that these figures represented by the letter dated June 13, 1912, covered in Claimant's Exhibit No. 1, together with the certificates for \$19,000 represent the purchase price which calls for the property at \$160 a foot for the first hundred feet and \$125 a foot for the next 153 feet, as evidenced by the memorandum marked "Claimant's Exhibit No. 6." And this other point which I was going to ask Mr. Johnson. I don't know whether counsel will concede my

(Testimony of William C. Wallace.)

point on this, but if counsel will concede it perhaps I will not call Mr. Johnson. In his direct testimony the other day he laid stress upon the fact that this surrender value, so called, in these so-called certificates, was something of great value; and I purpose asking him this question: that if two persons would come in and demand the same piece of property in surrender of their certificates what he would do in a case of that kind?

Mr. CLARK.—That is a question that he can't ask, your Honor.

The REFEREE.—It is immaterial.

Mr. CLARK.—It is conceded that these various liens against that property in 1912 were paid off?

Mr. AYDELOTTE.—Not necessarily. They may have been assumed.

Mr. CLARK.—I will ask Mr. Aydelotte, will it be stipulated that the Realty Union did in fact discharge the mortgages and liens [121] against that property existing June 13, 1912, or at the time this deal was closed, and which it agreed to assume?

Mr. AYDELOTTE.—No, I will not admit anything of the kind.

Mr. CLARK.—I say that it is a fact that the Realty Union discharged every one of those liens and mortgages against the property which were in existence at that time.

The REFEREE.—And the present liens and mortgages are encumbrances placed on since?

Mr. AYDELOTTE.—I am willing to stipulate that whatever the record shows, now, for instance,

(Testimony of William C. Wallace.)

that the mortgage in favor of the Hibernia would not have been placed there if there was a lien on it; for I know very well that the Hibernia would not make a loan if there was an existing mortgage on it.

The REFEREE.—I understand you to stipulate it to be a fact, as Mr. Clark states it?

Mr. AYDELOTTE.—Yes, if Mr. Clark states that these mortgages and liens were all paid off, I am willing to stipulate to that.

The REFEREE.—Mr. Clark has so stated, and it is so stipulated.

Mr. CLARK.—Now then, your Honor, so that your Honor may have a complete record on the matter, and so that the decree, if necessary, can take into consideration those facts, we ought to stipulate what the existing encumbrances are, shouldn't we?

Mr. AYDELOTTE.—Yes, I think so.

Mr. CLARK.—We can agree on what mortgages and liens are on the property.

(Testimony closed; case submitted on briefs, 10, 10 and 5.)

[Endorsed]: Filed 5th day of May, 1916, at 10 o'clock A. M. A. B. Kreft, Referee in Bankruptcy, in and for the City and County of San Francisco.

[122]

(Title of Court, Cause and Number.)

**(Supplemental Testimony Taken Before Referee,
Armand B. Kreft.)**

Claim of Hattie Hardesty Chapman.

Wednesday, June 21, 1916, 2 P. M.

ARMAND B. KREFT, Referee in Bankruptcy,
Presiding.

APPEARANCES:

GEORGE CLARK, Esq., and ARTHUR H.
BRANDT, Esq., Attorneys for Trustee.

WM. M. AYDELOTTE, Esq., Attorney for Claim-
ant.

Mr. CLARK.—In this matter, if your Honor please, I want the privilege of offering further testimony bearing on the points at issue—on two points, particularly.

Mr. AYDELOTTE.—Those points are in the notice, *as they not?*

Mr. CLARK.—I think so. One of them I am sure you would have no objection to. I want to show the way in which, as evidenced by the records, the title to the property passed into the Realty Union. And as that is a matter of law, probably it will be stipulated to, and I apprehend that it will be more convenient for the gentlemen who are present, if we offer the oral testimony. The liens on which I want to offer additional testimony are: we want to show in a general way the amounts of the paid-up and instalment investment certificates outstanding, is-

sued by the Realty Union at the time of the transaction between Hattie Hardesty [123] Chapman and the Realty Union, and the amounts of such certificates issued thereafter, paid up to date of filing the petition in bankruptcy; that is, roughly; and we want to offer further evidence bearing on the nature of the transaction which occurred and which resulted in the issuance of the certificates to Hattie Hardesty Chapman, and particularly proof showing that at the very time of the issuance of the certificates in question, the Realty Syndicate, which had issued certificates on which the certificates in question were patterned, had been engaged in accepting certificates for real estate; that the Realty Syndicate was a company engaged in the same kind of business, and that those facts were known to Mr. Wallace, who handled the transaction between the Realty Union and Hattie Hardesty Chapman, on the part of and in behalf of Hattie Hardesty Chapman. We want also to offer the record testimony, because the record is a little confused on that point as to the steps whereby the property in question went into the Realty Union. And we want to offer in evidence the articles of incorporation, also, of the Realty Union, and its by-laws.

Mr. AYDELOTTE.—I assume, Mr. Clark, that your motion to introduce this testimony is in pursuance of your notice?

Mr. CLARK.—Yes.

Mr. AYDELOTTE.—Miss Chapman objects to the introduction of said testimony, and of the whole thereof, upon the ground that it is incompetent, ir-

relevant and immaterial. Miss Chapman does not object to the introduction of the record evidence of the title to the property in question.

The REFEREE.—The objection is sustained as to any testimony concerning the operations of the Realty Syndicate. I will, however, permit counsel to make of record the testimony he desires, so that in the event that the referee is in error in this ruling, the court [124] may have the testimony before it.

Mr. CLARK.—I would like your Honor to do this: rule on the matter only provisionally, so that after the submission of the authorities, if your Honor concludes the testimony is admissible, you may consider it.

The REFEREE.—If you desire such a ruling, Mr. Clark, you should first submit your authorities, and if you want to be heard further as to the admissibility of the testimony, the referee will hear you. It is my recollection that I did sustain, upon the hearing, objections to the testimony of some nature.

Mr. CLARK.—Your Honor had a perfect foundation for doing so at the time, I think, because Mr. Wallace expressly stated that the Realty Syndicate had not engaged in that sort of business, although we had testimony that these certificates were patterned upon the certificates of the Realty Syndicate.

The REFEREE.—That was not the basis of the Court's sustaining the objection. The reason that the Court sustained the objection was that the trans-

actions of the Realty Syndicate could not affect Miss Chapman; because not brought home to her. (Argument.) Let the ruling stand as made.

**Testimony of Roosevelt Johnson, for Trustee
(Recalled).**

Testimony of ROOSEVELT JOHNSON, for Trustee (Recalled).

The REFEREE.—It will not be necessary for Mr. Aydelotte to make objections to all the questions relating to the Realty Syndicate. The referee is permitting counsel for the trustee to put it in subject to the objections of counsel for claimant.

Mr. CLARK.—Q. Mr. Johnson, you have been sworn in this matter?

A. Yes, sir. [125]

Q. And your attention has been called already to the Petitioner's Exhibits Nos. 2 and 3, which constitute the paid-up investment certificates of the Realty Union which were issued to Hattie Hardesty Chapman. You recognize those documents?

A. Yes, sir.

Q. Are you acquainted with William C. Wallace?

A. Yes, sir.

Q. How long have you known him?

A. Twenty-five years.

Q. Were you ever connected with the company called the Realty Syndicate?

Mr. AYDELOTTE.—If your Honor please, I want to get that straight. Does my objection go to all questions with relation to the Realty Syndicate?

The REFEREE.—Yes.

(Testimony of Roosevelt Johnson.)

Mr. AYDELOTTE.—And any questions as to the matters of the Realty Union must be specially objected to?

The REFEREE.—Yes. (Question read.)

A. I was.

Mr. CLARK.—Q. In what capacity?

A. Assistant secretary.

Q. And for how long? A. Fifteen years.

Q. Where did that company do business?

A. 14 Sansome Street and 1218 Broadway, at that time.

Q. 1248 Broadway, Oakland?

A. Oakland; yes.

Q. Where was its principal place of business?

A. It was at 14 Sansome Street until August, 1915; then it was transferred to 1218 Broadway, Oakland.

Q. And was 1218 Broadway, Oakland, its principal place of business thereafter? A. It was.

Q. Generally, what was the business of the Realty Syndicate?

A. The purchasing and improving and selling of unimproved land.

Q. Generally, what was the business of the Realty Union, this concern which is bankrupt?

Mr. AYDELOTTE.—We object to that. That has already been gone into [126] by Mr. Johnson.

The REFEREE.—The objection is overruled.

A. The purchase and improvement and sale of unimproved land.

Mr. CLARK.—Q. Did you hold the same office in the Realty Syndicate during its entire period, that

(Testimony of Roosevelt Johnson.)

you have mentioned?

A. From 1898 until 1910; twelve years.

Q. And when was—just for the purpose of the record, and for convenience—when was the Realty Union organized? A. February, 1910.

Q. After the organization of the Realty Union were you connected with the Realty Union?

A. I was.

Q. In what capacity? A. Vice-president.

Q. Were you its vice-president up to the time the petition in bankruptcy was filed in this case?

A. No, up to July 6, 1915.

Q. While you were an officer of the Realty Syndicate was Mr. William C. Wallace, the gentleman who participated in the transaction in question here between the Realty Union and Hattie Hardesty Chapman, connected in any way with the Realty Syndicate?

A. Part of the time he represented them as an agent in the sale of their securities.

Q. Did you have occasion to meet him from time to time? A. Yes.

Q. How long prior to the formation, or prior to the time that you left the Realty Syndicate was Mr. Wallace connected with the Realty Syndicate?

A. From the very inception of the Syndicate he had a desk in the office, and off and on he worked for them as an agent, and off and on in the interim he would work at his personal business; but periodically he would work for the Syndicate.

Q. During the time that Mr. Wallace was con-

(Testimony of Roosevelt Johnson.)

nected with the Realty Syndicate do you know whether or not that concern was engaged in issuing investment certificates such as the Realty Union turned out? A. Yes, they were. [127]

Q. And what would you say as to the similarity or dissimilarity between the certificates issued by the Realty Syndicate and those issued by the Realty Union?

A. They were practically the same.

Q. Do you know whether prior to the time you left the Realty Syndicate that concern was allowing on account of the purchase price of its real property which it was disposing of, its investment certificate holders to turn in their certificates? A. It was.

Q. You understand I am now referring now to the clause in these two certificates here, or a provision such as is contained in the clause of these two exhibits here, whereby the holder of the paid-up investment certificate is to have the privilege, in the event that the corporation disposes of its real property, of turning those certificates in on account of the purchase price? A. I understand.

Q. You understand that? A. Yes.

Q. As I understand you, before you left the Realty Syndicate, the Realty Syndicate was engaged, in fact, in putting its property on the market and accepting in exchange on account of the purchase price, paid-up investment certificates?

A. It was, for five years prior to that.

Q. It was?

A. It was, for five years prior to that; it had ex-

(Testimony of Roosevelt Johnson.)

changed over \$2,000,000 worth.

Q. And where was the property, or where were the properties of the Realty Syndicate which were turned in, in this manner?

A. Oakland, Berkeley and Piedmont.

Q. Generally speaking, where were the holdings of the Realty Syndicate, its real property holdings?

A. All in Alameda County; mostly Oakland, Berkeley and Piedmont and Emeryville.

Q. What would you say as to the general knowledge that prevailed [128] in the community, as to the existence of this Realty Syndicate concern? It is a fact, is it not, that it had tracts of real property scattered all around, out in the Berkeley and in the Oakland sections? A. Yes.

Q. It had its signs, too, did it not, all along the car lines, showing the Realty Syndicate tracts?

A. It had signs on the tracts.

Q. Was there any car line running out from Oakland to Berkeley or Piedmont—any line of cars, from which the signs of the Realty Syndicate could not be seen?

A. Not if you travelled far enough.

Q. Did it have any subdivisions? A. Yes.

Q. It had larger tracts for subdivision purposes?

A. Yes.

Q. It dealt very extensively there in real property?

A. It had 107,000 front feet of front foot property and 11,000 acres of acreage property. It was all

(Testimony of Roosevelt Johnson.)

bunched together in Alameda County, in the north end.

Q. You said you left the Realty Syndicate in what year? A. 1910.

Q. And this deal was had with Hattie Hardesty Chapman in 1912? A. Yes.

Q. Do you know whether after you left the Realty Syndicate and became connected with the Realty Union the Realty Syndicate followed this practice that you have mentioned?

A. Yes, it did, and it is still doing it. But I got a letter this morning saying that they were going to stop it on the 10th of July.

Q. Mr. Johnson, do you know from anything about Mr. Wallace's connection with the Realty Syndicate, whether he knew that this practice was being followed by the Realty Syndicate?

A. Yes, he knew all about it. He sat in our office month after month, surrounded by about twenty agents. They were all engaged in that business, and he was fully familiar with the records.

Q. When you say "our office," you mean the office of the Realty [129] Syndicate?

A. Yes; I exchanged several million dollars in our office while he had a desk in our office. I say he had a desk. We gave him a desk. You might say it was not his desk. It was our desk, but he sat there.

Q. Could you—I don't care to have this worked out to any greater degree of nicety, but—first I will ask you, how long prior to June 1912 had the Realty Union been engaged in issuing what are called its

(Testimony of Roosevelt Johnson.)

paid-up and its instalment investment certificates?

Mr. AYDELOTTE.—We object to that as incompetent, irrelevant and immaterial.

The REFEREE.—The objection is overruled. This is the Realty Union.

Mr. AYDELOTTE.—Yes, but what was done before that cannot bind Miss Chapman.

The REFEREE.—The objection is overruled.

Mr. CLARK.—It is inconceivable that she didn't know about these things.

A. Beginning with June, 1910. We began issuing in June, 1910.

Q. Could you, roughly speaking, tell the court the amount of paid-up and installment investment certificates issued by the Realty Union all along, similar to those that have gone in evidence, and similar to those which have been filed in this case as claims? Can you tell us approximately what there was outstanding, of those certificates, in June, 1912?

A. There were hundreds of certificate holders of this concern; approximately 600,000.

Q. Is there any way in which you could apportion those? That is, just give an estimate, an approximate division between instalment investment certificates and the paid-up, of 1912, Mr. Johnson.

A. No. The paid-ups would be largely in excess, in amount, and the instalments largely in excess in number.

Q. Did the Realty Union after June, 1912, issue any of these certificates? I mean, other than those issued to Hattie Hardesty Chapman?

(Testimony of Roosevelt Johnson.)

A. It did; yes. [130]

Q. And could you tell us approximately what the total issue, or what increase there was, over the amount that had been issued in June, 1912?

A. More than \$100,000.

Q. More than \$100,000 were issued?

A. I believe so. Of course I am talking arithmetic. It is pretty hard to remember.

Q. I just want it generally. I don't need it stated with absolute nicety. And as regards these that were issued subsequent to June, 1912, of that hundred thousand, approximately, Mr. Johnson, what remained unpaid when the petition in bankruptcy in this case was filed?

A. I could not say what proportion of the hundred thousand remained unsold. Probably 150,000 were paid for after we began selling, and of that amount some came out of that batch and some were issued prior to that time.

Q. Yes. And you say there was a large number or a large amount of the certificates issued after June, 1912, which remained at the time of filing the petition in bankruptcy—remained unpaid?

A. Yes, there was.

Q. That ran into the thousands?

A. Oh, yes; tens of thousands.

Q. Now I think you have testified, but I want to get it clearly, and have it right in this connection, that the only way in which this company would have derived anything in the way of dividends or profits would have been by the selling of its real estate?

(Testimony of Roosevelt Johnson.)

A. By the selling at a profit.

Q. It had not, in June, 1912, as yet, begun the selling of the properties that it had accumulated, had it?

A. We began about that time. No, no; not 1912. We had not begun then yet. In June, 1914 was about the time that we began.

Q. But there was no way in which Hattie Hardesty Chapman or any others of the certificate holders could have received anything in the way of profits in this company excepting by the sale of its [131] real property? A. No.

Mr. AYDELOTTE.—Now, if your Honor please, we object to that as leading and as asking for the opinion of the witness, and as incompetent, irrelevant and immaterial.

The REFEREE.—The objection is overruled.

A. There was no other way.

Mr. CLARK.—Q. As I understand you, the business of this company was the business of acquiring tracts of real property?

A. That is what it practically amounted to; tracts of real property over around Oakland and in Berkeley; holding that real property and selling it off, at a profit.

Q. That is what it practically amounted to?

A. Yes.

Mr. AYDELOTTE.—I suggest that counsel do not ask leading questions.

The REFEREE.—I take it that there is no ques-

(Testimony of Roosevelt Johnson.)

tion as to the character of the business transacted by this concern.

Mr. AYDELOTTE.—But it might run into a question that really is important. We might as well observe the rules.

Q. I hand you what purports to be the official statement of the Realty Union at that time, June 29, 1912. Is that a correct statement of the Realty Union at that time? A. Yes, sir.

Q. I call your attention to an item under the heading of "Liabilities. Received from Investors, \$457,038.19." Of what does that item consist?

A. The amount received from investors in payment of investment certificates.

Q. Does that represent the amount of certificates issued at that time?

A. It represents the amount received from certificates issued at that time.

Q. As a matter of fact, you had issued certificates in a greater amount than that, but you had received no more cash than that?

A. The instalment certificates were payable in instalments. The [132] face of the investment certificates were in excess of this amount, but that was the amount received.

Q. As a matter of fact, there was that much worth of certificates issued at that time? A. Yes.

The REFEREE.—Q. Paid for at that time?

A. Yes.

Mr. AYDELOTTE.—Q. When you testified that

(Testimony of Roosevelt Johnson.)

about \$600,000 were issued at that time, was that the item or amount?

A. Yes, this is the item or amount.

Q. Then instead of its being \$600,000 it was only \$457,000?

A. This was June, 1912. My memory was touching only to the statement in December, 1912, which is the latest statement I had seen. I hadn't had access to this semi-annual statement recently.

Mr. CLARK.—Q. What is the date of that that you just gave?

Mr. AYDELOTTE.—June 29, 1912.

Q. I show you the financial statement of the Realty Union, dated December 31, 1912, and under the head of "Liabilities" it shows: "Received of Investors, \$550,484.69." Is that the item you referred to in your testimony as \$600,000?

A. It is. My statement was that it was approximately \$600,000.

Mr. CLARK.—I have one in 1914 which I would like to ask you to follow up on.

Mr. AYDELOTTE.—Q. I hand you a financial statement of the Realty Union, dated December 31, 1914, in which is the statement under the head of "Liabilities," "Received from Investors, \$858,769.76." That is the amount for which certificates have been issued; that is, representing the amount of money you had received from certificates issued?

A. Yes, sir.

Mr. CLARK.—Can we read in the same connection

(Testimony of Roosevelt Johnson.)

from the one of December 31, 1913, showing \$774,012.30?

Mr. AYDELOTTE.—That is all right. They can be put in there in order.

Mr. CLARK.—The production of a copy of them is waived. [133]

Mr. AYDELOTTE.—Q. In these statements, Mr. Johnson, I call your attention to the Realty Union statement of June 29, 1912, under the head of “Assets,” “Realty, \$1,039,009.65.” Does that represent real property bought by certificates and other than property acquired by the Realty Union? That is the item of realty is it not?

A. Yes.

Q. And that realty was obtained by turning in property for these certificates?

A. Not entirely. It was bought by cash, certificates and other securities. It is acquired by purchases by the Realty Union.

Q. Acquired by purchases, either by cash or by these certificates? In other words, whenever the Realty Union would acquire a piece of property, you would add it into this asset column? A. Yes.

Mr. CLARK.—And as you state, part of it was acquired by the issuance of certificates?

A. Yes.

Q. Was the proportion between the paid-up certificates and the investment certificates which prevailed at the time of the filing of the petition in bankruptcy about the same in June, 1912, and in the various years through the issuance of the certificates,

(Testimony of Roosevelt Johnson.)

as regards quantity? A. Presumably.

Q. Would you say approximately?

A. No, no. I would not say without going through my books. Some difference prevailed, the same as when they were sold; and the presumption was that the relation would be maintained.

Mr. CLARK.—Your Honor will take judicial notice of the number of these certificates and the amounts which have been presented here upon the claims. That is, if this testimony be considered, I want that to appear in this record, that we offer to show the number of claims presented against this Realty Union upon those outstanding investment certificates, paid-up and instalment. May that be considered a part of the record in this case? [134]

The REFEREE.—Yes. The claims are all on file here. The trustee can add up the totals.

Mr. CLARK.—I am not sure about the necessity of making the offer, but I simply want it understood that it is a part of this particular case, and your Honor so orders?

The REFEREE.—Yes.

Testimony of Frank E. Grace, for Trustee.

Testimony of FRANK E. GRACE, called for trustee, sworn.

Mr. CLARK.—Q. What is your age, Mr. Grace?

A. 31.

Q. You reside where? A. Berkeley.

Q. Were you ever connected with a company called the Realty Syndicate? A. I was.

(Testimony of Frank E. Grace.)

Q. That was a corporation doing business extensively in Alameda County?

A. I was connected with it.

Q. It was doing business extensively in Alameda County while you were connected with it?

A. Yes.

Q. Was it doing business over there? A. Yes.

Q. And it had business offices in the City of Oakland and at 14 Sansome Street, San Francisco, until July, 1905?

A. And thereafter it had offices at 1218 Broadway, Oakland.

Q. What office did you have in the company? What was your connection?

A. I had no official position there. I was Mr. Johnson's assistant. He was assistant secretary.

Q. Do you know from your contact with the company and the work that you were doing, whether prior to June, 1912, that company was engaged in issuing investment certificates? A. It was; yes.

Q. When did you leave the company?

A. In March of 1910 or the first of April, 1910.

Q. Did you leave the company about the time that Mr. Johnson did? [135]

A. About the same time; yes.

Q. And it was about that time that the Realty Union was organized?

A. The Realty Union was organized in February, 1910.

Q. Did you afterwards become connected with the Realty Union? A. I did.

(Testimony of Frank E. Grace.)

Q. Do you know anything regarding the similarity or dissimilarity between the certificates that were issued by the Realty Union and those issued by the Realty Syndicate?

A. They were approximately the same, because I used the Realty Syndicate plates, and only made a few minor changes.

Q. Do you know whether prior to your leaving the Realty Syndicate that company was engaged in the practice of receiving its investment certificates on account of real property, and the real property which it was holding and which it was disposing of?

A. It was doing that, yes.

Q. That is, it was receiving investment certificates in exchange for real property that it was disposing of? A. It was.

Q. Was it engaged in that practice to a small degree or to a considerable extent?

A. To a very considerable degree.

Mr. AYDELOTTE.—I will stipulate that he will testify the same as Mr. Johnson.

Mr. CLARK.—If you will stipulate that he will testify the same as Mr. Johnson, there are no further questions. In reference to all of it?

Mr. AYDELOTTE.—Yes, to all of it. Of course I don't waive any of my objections.

Mr. CLARK.—We desire to offer a copy of the by-laws, particularly Article No. 19, and wish to read it into the record. (Reading): "Any owner of investment certificates may apply the amount paid thereon, on account of the purchase of unimproved

(Testimony of Roosevelt Johnson.)

realty held for sale by the corporation.” You waive the objection that proper [136] foundation has not been laid for the introduction of that particular article of the by-laws, Mr. Aydelotte? We have the original by-laws here, and this is simply a printed copy that I am reading from. Article 19 of the original reads the same way.

Mr. AYDELOTTE.—Let me see the original. (Mr. Clark hands original to Mr. Aydelotte.)

Mr. CLARK.—It is stipulated that the by-laws contained in Article 19, and that they contained at all times referred to in the testimony of the witnesses, the following provision: “Any owner of investment certificates may apply the amount paid thereon, on account of the purchase of unimproved realty held for sale by the corporation.”

**Testimony of Roosevelt Johnson, for Trustee
(Resumed).**

Mr. CLARK.—Q. Mr. Johnson, at the time, June 19, 1912, at the time of the transaction between this company and Hattie Hardesty Chapman, did it or did it not own large tracts of unimproved real property in the vicinity of Oakland and Berkeley, in Alameda County?

A. It did.

Q. Could you state it in rough figures?

A. I would have to refer to the books.

Q. Let me ask this question: Had it, at the time of the dealings—of its dealings with Hattie Hardesty Chapman, those properties which it had on hand at

(Testimony of Roosevelt Johnson.)

the time of the filing of the petition in bankruptcy herein? A. Some of them.

Q. Well, about what proportion of the properties which were on hand at the time of the filing of the petition in bankruptcy were on hand, or was on hand, in June, 1912?

A. I would have to refer to the book.

Q. Isn't it a fact that most of the property that was on hand at [137] the time of the filing of the petition in bankruptcy was on hand in June, 1912?

A. There were a good many purchases after that date.

Q. It is true, is it not, Mr. Johnson, that all the realty holdings in the Realty Union after June, 1912, at the time of the dealing with Hattie Hardesty Chapman consisted of unimproved tracts of real property? A. Practically.

Q. Practically all?

A. There were two pieces that were improved.

Q. And what was the value of those properties at that time? A. At about a million dollars.

Q. Did you value them approximately at a million in 1912? A. Yes.

(Testimony closed; case continued for argument to July 1, 1916, at 10 A. M.)

Friday, July 21, 1916, 2 P. M.

ARMAND B. KREFT, Referee in Bankruptcy,
Presiding.

APPEARANCES:

GEORGE CLARK, Esq., Attorney for Trustee.

WM. M. AYDELOTTE, Esq., Attorney for Claimant, Hattie Hardesty Chapman.

Mr. CLARK.—If your Honor please, in this matter when we adjourned the last time it was with the understanding that we would draft a stipulation in relation to the evidence, particularly the record evidence, showing the manner in which the Realty Union succeeded to the parcels of land upon which a vendor's lien is now claimed by Hattie Hardesty Chapman. I prepared a stipulation which counsel for Miss Chapman thinks is too broad; and it has resulted in our appearing before your Honor at this time in order to have the matter settled by the court. I proposed to Mr. Aydelotte that I [138] appear and make the offer of the record—these various transactions as disclosed by the record—and that thereupon he make his objections. There is nothing in the proposed stipulation that is not warranted by the record itself. I have before me the proposed stipulation, and I will take it up and make the offer of proof of the various items of evidence as they are set forth in the stipulation.

We first offer to show that on February 23, 1912, subject to certain encumbrances and as hereinafter explained, Hattie Hardesty Chapman held title to a portion of, and William Carlton Wallace held title to

a portion of that certain real property situated in the City of Oakland, County of Alameda, State of California, and described as follows:

Commencing at the point of intersection of the eastern line of Telegraph Avenue, as the same now exists, with the northern line of 45th Street, formerly called Linden Lane; running thence northerly along said line of Telegraph Avenue two hundred and fifty-three (253) feet eight (8) inches, more or less, to the northern boundary line of the land heretofore conveyed by S. E. Alden to Annie Wallace; thence along said line north $84^{\circ} 15'$ east three hundred and fifty-five (355) feet to the western boundary line of the land conveyed by Margaret A. Wallace, an unmarried woman, to Henry Eisenberg, by deed dated November 18th, 1908, and recorded November 23d, 1908, in liber 1531 of Deeds, page 118, said Alameda County records; thence at right angles southerly along said line two hundred and forty and $\frac{6}{10}$ (240.6) feet more or less to the northern line of 45th Street; and thence along said last-named line south $84^{\circ} 15'$ west four hundred and thirty-one (431) feet, more or less, to the point of commencement. Being a portion of Plot No. 35, as per Kellersberger's map of the Ranchos of V. and D. Peralta on file in the office of the County Recorder of said Alameda County.

Mr. AYDELOTTE.—We object on the ground that it is incompetent, irrelevant and immaterial; that Miss Chapman never had and never claimed to own any portion of the larger easterly portion of the tract described in paragraph in *in* the stipulation.

Mr. CLARK.—Which we concede. But you don't make any objection that we are not introducing the original record?

Mr. AYDELOTTE.—No, subject to our examination of the title papers, which counsel states he will produce. [139]

Mr. CLARK.—I haven't got any title papers.

Mr. AYDELOTTE.—I will take that and verify it.

Mr. CLARK.—The second paragraph of the proposed stipulation is that the parcel commencing at the northeastern corner of Telegraph Avenue and 45th Street; thence northerly along Telegraph Avenue 200 feet; easterly parallel with 45th Street 100 feet; thence northerly parallel with Telegraph Avenue 53 feet 8 inches more or less to the northern line of land of Alden to Wallace; easterly parallel with 45th Street 25 feet; thence southerly, parallel with Telegraph Avenue 253 feet 8 inches more or less to 45th Street; and thence westerly thereon 125 feet to commencement, was, on February 23, 1912, vested in Hattie Hardesty Chapman, a single woman of the City of Alameda, California. The parcel commencing on the eastern line of Telegraph Avenue 200 feet northerly from 45th Street; thence northerly along Telegraph Avenue 53 feet 8 inches more or less to the north *line land* of Alden to Wallace by easterly 100 feet, parallel with 45th Street, vested in William Carlton Wallace, of the City of Oakland, California, and the remainder thereof was on February 23, 1912, vested in Margaret Annie Wallace, (feme sole), of the City of Oakland, California. We offer to show

what is set forth in the paragraph which I have just read.

Mr. AYDELOTTE.—Paragraph 2 is all right.

Mr. CLARK.—We next offer to show what is set forth in paragraph 3.

Mr. AYDELOTTE.—Paragraph 3 shows Chapman and Wallace, both.

Mr. CLARK.—We make the offer now, of what is set forth in paragraph 3 of the proposed stipulation, showing that the whole of said premises were subject to encumbrances as follows:

(a) Mortgage: William Carlton Wallace, a single man, to Farmers & Merchants' Savings Bank of Oakland, California, a corporation, dated December 1, 1905, and recorded December 4th, 1905, in Liber 732 of Mortgages, page 348, made to secure the payment of sixty-five [140] hundred dollars (\$6,500) in three years after date, with interest according to the terms of a certain promissory note of even date therewith, and also as security for further advances, excepting that said mortgage did not at said time cover the northerly portion of said tract fronting 153.8 on Telegraph Avenue, and extending easterly 125 feet, and of a uniform depth.

(b) Mortgage: William Carlton Wallace (single man) to E. J. Dinkelspiel, dated September 28, 1906, and recorded September 29, 1906, in liber 770 of Mortgages, page 113, made to secure the payment of one thousand dollars (\$1000), one year after date, with interest according to the terms of a certain promissory note of even date therewith, and also as security for further advances, excepting that said

mortgages at said time covered only that part of the entire tract which the mortgage mentioned in the preceding subdivision (a) covered at said time.

(c) Deed of Trust: William Carlton Wallace, a single man, to Wm. M. Gardiner, and A. K. Munson, dated July 1, 1909, and recorded July 2, 1909, in liber 1612 of Deeds, page 168, records of Alameda County, California, made to secure the payment of six thousand dollars (\$6,000), unto Serena N. Gardiner, with interest, according to the terms of a certain promissory note of even date therewith, and also as security for further advances, covering that part of entire tract as follows: Lot on east line of Telegraph Avenue 100 feet northerly from 45th Street; northerly along Telegraph Avenue 153 feet 8 inches by 125 feet easterly.

(d) Mortgage: William Carlton Wallace, a single man, to Leander R. Webster, dated September 3, 1909, and recorded October 16, 1909, in liber 904 of Mortgages, page 169, made to secure the payment of one thousand dollars (\$1000) on September 23, 1910, with interest, according to the terms of a certain promissory note of even date therewith, and also as security for further advances. [141] Covered lot on east line of Telegraph Avenue 100 feet northerly from 45th Street; thence easterly 125 feet by 153 feet 8 inches northerly.

(e) Writ of Attachment: Issued out of the Superior Court of the County of Alameda, State of California, wherein Ransome-Crummey Company, a corporation, is plaintiff, and William C. Wallace is defendant, recorded November 1, 1910, in Liber 28 of

Attachments, page 329, to recover the sum of \$325.00 besides costs, etc. Levy made on said date by sheriff of Alameda County on all the right, title, claim and interest of defendant of, in and to lot at the northeastern corner of Telegraph Avenue and 45th Street, easterly on 45th Street 125 feet by 253 feet 8 inches northerly, parallel with Telegraph Avenue. In the above-entitled action in the said Superior Court, Case No. 33,995, judgment was entered against said William C. Wallace on January 15, 1912, for the sum of \$392.95, in Volume 91 of Judgments, page 583.

(f) Mortgage: Hattie Hardesty Chapman, a single woman, to E. J. Dinkelspeil, dated September 26, 1911, and recorded September 27, 1911, in Liber 969 of Mortgages, page 475, made to secure the payment of nine hundred and seventeen and 89/100 dollars (\$917.89) in one day after date, with interest at the rate of eight per cent per annum, according to the terms of a certain promissory note of even date therewith, and also as security for further advances. Covered lot at the northeastern corner of Telegraph Avenue and 45th Street, northerly along Telegraph Avenue 100 feet by 125 feet easterly on 45th Street. I offer what is set forth in paragraph 3 and all subdivisions thereof.

Mr. AYDELOTTE.—These mortgages cover the whole of it?

Mr. CLARK.—No, they cover nothing but this piece here. (Showing on plat.) [142]

The REFEREE.—(After argument.) Counsel's

statement refers to nothing but the property in dispute?

Mr. AYDELOTTE.—Counsel certainly said so.

Mr. CLARK.—I so state now. That which you refer to is merely a clerical error. I offer what is set forth in paragraph 3, subject to this additional statement, that the whole of the premises referred to in this paragraph includes only the portions of the premises by William Carlton Wallace and Hattie Hardesty Chapman.

Mr. AYDELOTTE.—That is, the property described in paragraph 2?

Mr. CLARK.—Yes, that is the property described in paragraph 2.

Mr. AYDELOTTE.—Now let that be amended to read “the property described in paragraph 2.”

Mr. CLARK.—I next offer what is set forth in paragraph 4 of the stipulation, that on February 28, 1912, William Carlton Wallace and Hattie Hardesty Chapman conveyed by grant, bargain and sale deed, said deed, duly recorded in Liber 2059 of Deeds, page 44, records of the Recorder’s Office, Alameda County, all of that part of the real property hereinbefore mentioned, standing in their *name* or in the name of either of them, unto Caro Mills, and being described as follows:

“Beginning at a point on the eastern line of Telegraph Avenue as the same now exists, distant thereon northerly one hundred (100) feet from the point of intersection thereof with the northern line of said 45th Street (formerly Linden Lane); running thence northerly along said line of Telegraph Avenue one

hundred and fifty-three (153) feet, eight (8) inches, more or less, to the northern line of the land heretofore conveyed by S. E. Alden to Annie Wallace; thence along said line north $84^{\circ} 15'$ east one hundred and twenty-five (125) feet; thence south $12^{\circ} 30'$ west parallel with Telegraph Avenue one hundred and fifty-three (153) feet, eight (8) inches to a point on said line distant one hundred (100) feet northerly from the northern line of Forty-fifth Street; and thence south $84^{\circ} 15'$ west one hundred and twenty-five (125) feet to the point of beginning.

Being a portion of Plot No. 35, as said plot is delineated and so designated upon Kellersberger's Map of the Ranchos of V. and D. Peralta, on file in the office of the County Recorder of the said County of Alameda."

Subject to your right to check it up, I offer what is set forth in Paragraph 4. Have you any objection to that? [143]

Mr. AYDELOTTE.—No.

Mr. CLARK.—I next offer what is set forth in Paragraph 5, as follows: That thereafter on March 8, 1912, Bradford Webster, Special Administrator of the estate of Leander R. Webster, deceased, executed a release of the mortgage hereinbefore mentioned, which had been made to Leander R. Webster, said release being duly recorded on said date in Liber 1005 of Mortgages, page 425, records of the County Recorder's office of Alameda County. I next offer what is set forth in paragraph 6.

Mr. AYDELOTTE.—That does not describe any particular property. I don't know what that covers.

Mr. CLARK.—It relates to the preceding instrument.

Mr. AYDELOTTE.—That is all right, assuming that it relates to the corner piece.

Mr. CLARK.—But it does. Paragraph 6 is as follows: That on March 18, 1912, William M. Gardiner and A. F. Munson reconveyed the property which they had received as trustees, for Serena M. Gardiner, as hereinbefore mentioned, by deed dated March 18, and duly recorded on same date in Liber 2055 of Deeds, page 305, records of the Recorder's Office of Alameda County. I next offer what is set forth in Paragraph 7.

Mr. AYDELOTTE.—Seven is all right.

Mr. CLARK.—Paragraph 7 is as follows: That on April 12, 1912, said Caro Mills executed a deed of trust, duly recorded on same date in Liber 2021 of Deeds, page 389, records of Alameda County Recorder's Office, to Charles T. Rodolph and A. E. H. Cramer, as trustees, to secure the payment of the Union Savings Bank, a corporation, of the sum of five thousand dollars (\$5,000), represented by a promissory note made to said Union Savings Bank by the said Caro Mills. That said deed of trust covered all of the property which had been conveyed by William Carlton Wallace and Hattie Hardesty [144] Chapman unto Caro Mills, as heretofore set forth. I next offer what is set forth in paragraph 8.

Mr. AYDELOTTE.—Eight is right.

Mr. CLARK.—Paragraph 8 is as follows: That on May 14, 1912, E. J. Dinkelspeil executed a release of the mortgage by release recorded on said date in

Book 1016 of Mortgages at page 265, records of the Recorder's Office of Alameda County. Said release released the mortgage recorded in Book 969 of Mortgages, page 475, same records.

Mr. AYDELOTTE.—Eight is right.

Mr. CLARK.—Next I offer what is set forth in paragraph 9, as follows: That on June 8, 1912, said E. J. Dinkelspiel executed a release of mortgage by release duly recorded on said date in Book 1009 of Mortgages, at page 392, records of the Recorder's Office of Alameda County. Said release released the mortgage hereinbefore mentioned recorded in Book 770 of Mortgages at page 113.

Mr. AYDELOTTE.—That is right.

Mr. CLARK.—Next I offer what is set forth in Paragraph 10, as follows: That on May 29, 1912, said Caro Mills, by a grant, bargain and sale deed, duly recorded on June 12, 1912, in Book 2067 of Deeds, page 266, same records; that said deed conveyed the real property hereinbefore mentioned as having been conveyed to Caro Mills.

Mr. AYDELOTTE.—To whom does that deed grant the property?

Mr. CLARK.—I think that is the deed whereby it was conveyed to the Realty Union. The statement set forth in Paragraph 10 is that the deed in question conveyed the property previously conveyed to Caro Mills, unto the Realty Union. That is, Mills granted to the Realty Union what Mills had received.

Mr. AYDELOTTE.—Subject to that correction it is all right. [145]

Mr. CLARK.—I next offer what is set forth in

paragraph 11, which is as follows: That on May 28, 1912, by a grant, bargain and sale deed, recorded on June 12, 1912, in Book 2070 of Deeds, at page 258, records of the Recorder's Office of Alameda County, Hattie Hardesty Chapman conveyed to Roosefelt Johnson all that certain real property described as follows:

"All those lots of land situated in the City of Oakland, County of Alameda, State of California, bounded and described as follows, to wit:

Beginning at the point of intersection of the eastern line of Telegraph Avenue with the northern line of 45th Street (formerly Linden Lane), as said avenue and street now exist; running thence easterly along said line of forty-fifth Street one hundred and twenty-five (125) feet; thence north $12^{\circ} 30'$ east one hundred (100) feet; thence south $84^{\circ} 15'$ west one hundred and twenty-five (125) feet to the eastern line of Telegraph Avenue; thence southerly along said line of Telegraph Avenue one hundred (100) feet, more or less, to the point of beginning.

Being a portion of Plot No. 35 as said Plot is designated upon Kellersberger's map of V. & D. Peralta Ranchos, on file in the office of the County Recorder of the said County of Alameda."

Mr. AYDELOTTE.—Eleven is all right.

Mr. CLARK.—I next offer what is set forth in Paragraph 12, as follows: That on June 29, 1912, said Roosevelt Johnson and wife, by deed of conveyance recorded July 15, 1912, transferred to The Realty Union, all of the property which as heretofore mentioned was conveyed to said Roosefelt Johnson.

The deed was recorded July 15, 1912, in Book 2092 of Deeds, page 45, same records.

Mr. AYDELOTTE.—That is agreed to.

Mr. CLARK.—I next offer what is contained in paragraph 13, which is as follows: That on June 20, 1912, the Farmers' and Merchants' Savings Bank of Oakland, California, a corporation, by release of mortgage recorded on the same date in Book 1030 of Mortgages, page 418, same records, released the mortgage hereinbefore mentioned, which was recorded in Book 732 of Mortgages, page 248, same records.

Mr. AYDELOTTE.—Which is agreed to.

Mr. CLARK.—We make one offer covering paragraphs 14 to 22, inclusive, which refer to transactions relating to what was done with the [146] property that had been conveyed finally to the Realty Union; showing dealings with it right along up to the time they went into bankruptcy. The paragraphs offered are as follows:

14. That on August 7, 1913, The Realty Union, a corporation, deeded to George W. Fanning by deed of conveyance recorded on said date in Book 2202 of Deeds, page 23, same records, all that real property which was conveyed by Hattie Hardesty Chapman to Roosevelt Johnson, by deed of conveyance hereinbefore mentioned as having been made by her to him.

15. That on August 7, 1913, said George W. Fanning executed a deed of trust to E. G. Lohmann and M. A. McAuley, trustees for E. H. Lohmann, to secure the payment of the sum of ten thousand dollars (\$10,000), represented by promissory note made by

said vendor to said E. H. Lohmann; that said deed of trust covered the real property which had been conveyed to Fanning as mentioned in the last preceding paragraph, and it was recorded on August 7, 1913, in Book 2202 of Deeds, at page 25.

16. That on July 28, 1914, the trustees mentioned in the last-named deed of trust, reconveyed the property subject to the trust deed, to the said George W. Fanning, said deed of reconveyance being recorded on July 31, 1914, in Book 2256 of Deeds, at page 430, same records.

17. That on August 14, 1913, said Fanning reconveyed the property to The Realty Union, a corporation, said deed of reconveyance was recorded on the same date in Book 2190 of Deeds, at page 246, same records.

18. That on July 21, 1914, The Realty Union conveyed to Roosevelt Johnson, the property which had been previously conveyed to said Fanning, which deed of conveyance was recorded on said date in Book 2262 of Deeds, page 345, same records. [147]

19. That on July 28, 1914, said Roosevelt Johnson mortgaged said property mentioned in the last preceding paragraph, to the Hibernia Savings & Loan Society, a corporation, to secure the payment of a promissory note in the sum of \$5,000, executed by said Roosevelt Johnson to said Hibernia Savings and Loan Society; said mortgage was recorded on July 29, 1914, in Book 1069 of Mortgages, page 393, same records.

20. That on July 28, 1914, said Roosevelt Johnson mortgaged to the same mortgagee last men-

tioned, the same property, to secure the payment of a promissory note in the sum of \$5,000, executed by said Johnson to said corporation. Said mortgage was recorded on the same date, in Book 1069 of Mortgages, page 396, same records, and said mortgage included other property.

21. That on August 1, 1914, said Johnson reconveyed the property which he had mortgaged as aforesaid, to The Realty Union, a corporation, and said deed of reconveyance was recorded on September 11, 1914, in Liber 2284 of Deeds, page 189, same records.

22. The action brought by Hattie Hardesty Chapman, claiming a vendor's lien, and filed in the Superior Court of the State of California in and for the County of Alameda, against The Realty Union, a corporation, was begun on May 10, 1915, and on that date notice of *lis pendens* filed.

Mr. AYDELOTTE.—We make the same objections as to the last-mentioned paragraphs and the testimony; particularly those made to the other paragraphs heretofore mentioned.

The REFEREE.—That as I understand, relates to the Realty Union.

Mr. AYDELOTTE.—The conveyances to the Realty Union.

The REFEREE.—And the encumbrances made, of the Realty Union. The objection is overruled.

Mr. AYDELOTTE.—We waive the production of the original records [148] subject to our right to check up. As I understand, the purpose of this offer is to establish that the Realty Union dealt with this property as its own.

Mr. CLARK.—It is to show that you haven't any vendor's lien, and that if you ever had one you waived it; and second, as evidence of the fact that you waived it, we offer to show the method in which the property was dealt with.

Mr. CLARK.—I ask that the stenographer be directed to incorporate these various paragraphs in his record.

(Closed. Submitted on briefs to be filed.)

[Endorsed]: Filed 12th day of July, 1916, at 10 o'clock A. M. A. B. Kreft, Referee in Bankruptcy, in and for the City and County of San Francisco.

Filed Jun. 27, 1917, at 3 o'clock P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.
[149]

(Title of Court and Cause.)

**Findings of Fact and Order (of A. B. Kreft, Referee,
Disallowing Claim of H. H. Chapman).**

R. M. SIMS, Trustee of The Realty Union, a corporation, Bankrupt, having heretofore filed his petition in due form for an order of sale of all of the real estate belonging to the estate of said bankrupt, and upon the hearing of said petition, Hattie Hardesty Chapman having on December 15, 1915, appeared and set up the claim of a vendor's lien to certain of the real property in said petition described and hereinafter particularly described, as appears from her verified answer in said proceeding, and upon the hearing of said petition, and of the said claims of the said Hattie Hardesty Chapman, it having been stip-

ulated by the parties that the issues to be determined between the said Hattie Hardesty Chapman and the said trustee, should be determined by the filing of a copy of a complaint (which said complaint had prior to the filing of the petition in bankruptcy herein has been filed by the said Hattie Hardesty Chapman in the Superior Court of the State of California, in and for the County of Alameda), and by the filing of an answer to said complaint by the said trustee; and said complaint having been filed in accordance with said stipulation by the said Hattie Hardesty Chapman through her said attorney, and the said trustee having filed his answer thereto, together with an amendment to his answer, the filing of which said amendment was permitted by the Court during the hearing of said issues; and the hearing of the issues raised by the said complaint and the answer thereto, having come on regularly for hearing on March 29, 1916, upon stipulation of the parties that the referee should decide said issues and determine the question as to whether such vendor's lien did or did not exist; and the hearing of said issues having been continued from time to time and finally submitted to the referee for decision, and the matters in issue having been fully argued in briefs filed with the referee upon such admission, the referee now makes the following decision and order:

[150]

THE FOLLOWING FACTS ARE FOUND TO BE
TRUE:

1.

That on February 23, 1912, and prior to any of the

negotiations resulting in the making of any transfer of real property by the said Hattie Hardesty Chapman to said The Realty Union, a corporation, the real property mentioned in the complaint was owned, as follows:

I. The parcel bounded by beginning at the north-east corner of Telegraph Avenue and 45th Street, and running thence northerly along Telegraph Avenue 200 feet; easterly parallel with 45th Street 100 feet; thence northerly parallel with Telegraph Avenue 53 feet 8 inches more or less to the northern line of the entire tract; easterly parallel with 45th Street 25 feet; thence southerly, parallel with Telegraph Avenue, 253 feet 8 inches more or less to 45th Street; and thence westerly thereon 125 feet to the point of commencement, was on February 23, 1912, owned by Hattie Hardesty Chapman, a single woman, of the City of Alameda, California.

II. The parcel commencing on the eastern line of Telegraph Avenue 200 feet northerly from 45th Street; thence northerly along Telegraph Avenue 53 feet 8 inches more or less to the north line of land granted by Alden to Wallace (the north line of the entire tract); thence easterly along said line 100 feet; thence southerly parallel with Telegraph Avenue 53 feet 8 inches; thence westerly 100 feet to the point of beginning, was owned by William Carlton Wallace, and also known as William C. Wallace.

2.

That the said premises were on said February 23, 1912, subject to encumbrances as follows:

(a) A mortgage made by William Carlton Wal-

lace, a single man, to Farmers & Merchants Savings Bank of Oakland, California, a corporation, dated December 1, 1905, and recorded December [151] 4, 1905, in Liber 732 of Mortgages, page 348, to secure the payment of sixty-five hundred dollars (\$6500) in three years after date, with interest, according to the terms of a certain promissory note of even date therewith, and also as security for further advances, covered the entire tract, excepting that said mortgage did not at said time cover the northerly 153 feet 8 inches of said tract fronting on Telegraph Avenue and extending easterly from Telegraph Avenue, 125 feet, and of a uniform depth.

(b) A mortgage made by William Carlton Wallace, a single man, to E. J. Dinkelspiel, dated September 28, 1906, and recorded September 29, 1906, in Liber 770 of Mortgages, page 113, to secure the payment of one thousand dollars (\$1,000), one year after date, with interest according to the terms of a certain promissory note of even date therewith, and also as security for further advances, covered that part of the entire tract which the mortgage mentioned in the preceding subdivision (a) covered at said time.

(c) A deed of trust executed by William Carlton Wallace, a single man, to Wm. M. Gardiner, and A. K. Munson, dated July 1, 1909, and recorded July 2, 1909, in Liber 1612 of Deeds, page 168, records of Alameda County, California, and made to secure the payment of six thousand dollars (\$6,000), unto Serena N. Gardiner, with interest, according to the terms of a certain promissory note of even date therewith, and also as security for further advances, covered that

part of the entire tract as follows: Lot on east line of Telegraph Avenue 100 feet northerly from 45th Street; northerly along Telegraph Avenue 153 feet 8 inches, by a uniform depth of 125 feet easterly.

(d) A mortgage executed by William Carlton Wallace, a single man, to Leander R. Webster, dated September 3, 1909, and recorded October 16, 1909, in Liber 904 of Mortgages, page 169, and made to secure the payment of one thousand dollars (\$1,000) on September 23, 1910, with interest, according to the terms of a certain promissory note of even date therewith, and also as security [152] for further advances, covered the lot on the east line of Telegraph Avenue, 100 feet northerly from 45th Street; thence easterly a uniform depth of 125 feet by 153 feet 8 inches northerly.

(e) A writ of attachment issued out of the Superior Court of the County of Alameda, State of California, wherein Ransom-Crummey Company, a corporation, was plaintiff, and William C. Wallace was defendant, recorded November 1, 1910, in Liber 28 of Attachments, page 329, to recover the sum of \$325.00 besides costs. Levy of said writ was made on said date by the sheriff of Alameda County on all the right, title, claim and interest of defendant, of, in and to lot at the northeastern corner of Telegraph Avenue and 45th Street, easterly on 45th Street 125 feet by 253 feet 8 inches northerly, parallel with Telegraph Avenue.

In the above-entitled action in the said Superior Court, Case No. 33995, judgment was entered against said William C. Wallace, on January 15, 1912, for the

sum of \$392.95, in Volume 91 of Judgments, page 583.

(f) A mortgage executed by Hattie Hardesty Chapman, a single woman, to E. J. Dinkelspiel, dated September 26, 1911, and recorded September 27, 1911, in Liber 969 of Mortgages, page 475, made to secure the payment of nine hundred and seven and 89/100 dollars (\$907.89) in one day after date, with interest at the rate of eight per cent per annum, according to the terms of a certain promissory note of even date therewith, and also as security for further advances, covered lot at the northeastern corner of Telegraph Avenue and 45th Street, northerly along Telegraph Avenue, 100 feet by 125 feet easterly on 45th Street.

All recordation in this decision referred to was in the records of the County Recorder's Office of Alameda County.

3.

On February 28, 1912, William Carlton Wallace and Hattie Hardesty Chapman, conveyed by grant, bargain and sale deed, which [153] was duly recorded in Liber 2059 of Deeds, page 44, records of the Recorder's Office, Alameda County, all of that part of the real property hereinbefore mentioned, standing in their names or in the name of either of them, unto Caro Mills, and being described as follows:

"Beginning at a point on the eastern line of Telegraph Avenue, as the same now exists, distant thereon northerly one hundred (100) feet from the point of intersection thereof with the northern line of 45th Street (formerly Linden Lane); running thence northerly along said line of Telegraph Avenue one hundred and fifty-three (153) feet, eight (8)

inches, more or less, to the northern line of the land heretofore conveyed by S. E. Alden to Annie Wallace; thence along said line north $84^{\circ} 15'$ east one hundred and twenty-five (125) feet; thence south $12^{\circ} 30'$ west parallel with Telegraph Avenue one hundred and fifty-three (153) feet, eight (8) inches, to a point on said line distant one hundred (100) feet northerly from the northern line of 45th Street; and thence south $84^{\circ} 15'$ west one hundred and twenty-five (125) feet to the point of beginning.

Being a portion of Plot No. 35, as said plot is delineated and so designated upon Kellersberger's Map of the Ranchos of V. & D. Peralta, on file in the office of the County Recorder of the said County of Alameda."

4.

That thereafter on March 8, 1912, Bradford Webster, Special Administrator of the estate of Leander R. Webster, Deceased, executed a release of the mortgage hereinbefore mentioned which had been made by Leander R. Webster.

5.

That on March 18, 1912, William M. Gardiner and A. M. Munson reconveyed the property which they had received as trustees for Serena N. Gardiner, as hereinbefore mentioned.

6.

That on April 12, 1912, said Caro Mills executed a deed of trust, which was duly recorded on same date in Liber 2021 of Deeds, page 389, records of Alameda County Recorder's Office, to Charles T. Rodolph and A. E. H. Cramer, as trustee, to secure

the payment to the Union Savings Bank, a corporation, of the sum of five thousand dollars (\$5000), represented by a promissory note made to said Union Savings Bank by the said Caro [154] Mills. That said deed of trust covered all of the property which had been conveyed by William Carlton Wallace and Hattie Hardesty Chapman unto Caro Mills, as hereinbefore set forth.

7.

That on May 14, 1912, E. J. Dinkelspiel executed a release of the mortgage recorded in book 969 of Mortgages, page 475, same records.

8.

That on June 8, 1912, said E. J. Dinkelspiel executed a release of the mortgage recorded in Book 770 of Mortgages, at page 113.

9.

That on May 29, 1912, said Caro Mills, by a grant, bargain and sale deed, duly recorded on June 12, 1912, in book 2067 of Deeds, page 266, conveyed to The Realty Union, a corporation, the real property hereinbefore mentioned as having been conveyed to said Caro Mills.

10.

That on May 28, 1912, by a grant, bargain and sale deed, recorded on June 12, 1912, in Book 2070 of Deeds, at page 258, records of the Recorder's Office of Alameda County, Hattie Hardesty Chapman conveyed to Roosevelt Johnson all that certain real property described as follows:

"All of those lots of land situated in the City of Oakland, County of Alameda, State of California,

bounded and described as follows, to wit:

Beginning at the point of intersection of the eastern line of Telegraph Avenue with the northern line of 45th Street (formerly Linden Lane) as said avenue and street now exist; running thence easterly along said line of 45th Street one hundred and twenty-five (125) feet; thence north $12^{\circ} 30'$ east one hundred (100) feet; thence south $84^{\circ} 15'$ west one hundred and twenty-five (125) feet to the eastern line of Telegraph Avenue; thence southerly along said line of Telegraph Avenue one hundred (100) feet, more or less, to the point of beginning. [155]

Being a portion of Plot No. 35, as said plot is delineated and so designated upon Kellersberger's Map of V. & D. Peralta Ranchos, on file in the office of the County Recorder of the said County of Alameda."

11.

That on June 29, 1912, said Roosevelt Johnson and wife, by a deed of conveyance recorded July 15, 1912, transferred to The Realty Union, all of the property which as hereinbefore mentioned, was conveyed to the said Roosevelt Johnson. The deed was recorded July 15, 1912, in Book 2092 of Deeds, page 45, same records.

12.

That the facts hereinbefore set forth show the transactions relating to the title to the property involved in the complaint from a time prior to the negotiations between The Realty Union, a corporation, and Hattie Hardesty Chapman, which resulted in the making of any deeds by the said Hattie Hardesty

Chapman, or William Carlton Wallace, covering property that went eventually to the said corporation, through deeds made by Caro Mills and Roosevelt Johnson, and that it was only by the conveyances hereinbefore mentioned that the real property mentioned in the complaint was transferred to said corporation, The Realty Union, and that as to the said real property hereinbefore particularly specified in subdivision 2 of paragraph 1 hereof, the same was not transferred by the said Hattie Hardesty Chapman to the said The Realty Union, a corporation, or to any of its agents or officers. That said facts also show certain of the releases and satisfactions of liens which said The Realty Union, agreed to discharge on acquiring said real property.

12a.

That in the transactions hereinbefore mentioned, with which Caro Mills and Roosevelt Johnson were connected, they, the said Caro Mills and the said Roosevelt Johnson, were acting for said The Realty Union, a corporation, and while said transactions were in the name of the said Caro Mills and the said Roosevelt Johnson respectively, [156] they were in fact transactions of the said, The Realty Union, a corporation, acting through its agents.

12b.

The considerations for the transfers of said real property to The Realty Union, which were made, as hereinbefore found by the Court, were:

(a) The execution, issuance and delivery to the said Hattie Hardesty Chapman by the said The

Realty Union, a corporation, of certain of its Investment Certificates, true copies of which are as follows, to wit:

“No. 10219. E. \$10,000

Investment Certificate

Issued by

THE REALTY UNION

Incorporated 1910, under the Laws of California.

Ten years after date, THE REALTY UNION promises to pay to HATTIE HARDESTY CHAPMAN OF ALAMEDA, CALIFORNIA, TEN THOUSAND DOLLARS with interest at the rate of six per cent per annum, payable monthly, and whenever dividends paid its Capital Stockholders exceed six per cent per annum, the rate of interest paid hereon for the same periods shall be increased to equal the rate of said dividends.

6%

GOLD .

6%

This Certificate is transferable only upon endorsement and surrender. Any owner of Investment Certificates of a paid-up value of not less than \$100.00 may exchange them for unimproved realty held for sale by the Corporation.

IN WITNESS WHEREOF, The Realty Union has caused this Certificate to be signed by its President countersigned by its Auditor at its office in the City and County of San Francisco, State of California,

this sixth day of June, 1912.

ROOSEVELT JOHNSON,
Vice-president.

(Corporate Seal.)

JESSE B. FULLER,
Secretary.

Countersigned by
G. W. FANNING,
Auditor.

UNITED STATES OF AMERICA." [157]

"No. 10220. E. \$9000

Investment Certificate

Issued by

THE REALTY UNION

Incorporated 1910, under the Laws of California.

Ten years after date, THE REALTY UNION promises to pay to HATTIE HARDESTY CHAPMAN OF ALAMEDA, CALIFORNIA, NINE THOUSAND DOLLARS with interest at the rate of six per cent per annum, payable monthly, and whenever dividends paid its Capital Stockholders exceed six per cent per annum, the rate of interest paid hereon for the same periods shall be increased to equal the rate of said dividends.

6%

GOLD

6%

This Certificate is transferable only upon endorsement and surrender. Any owner of Investment Certificates of a paid-up value of not less than \$100.00 may exchange them for unimproved realty held for sale by the Corporation.

IN WITNESS WHEREOF, The Realty Union has caused this Certificate to be signed by its President

or Vice-president and by its Secretary and countersigned by its Auditor at its office in the City and County of San Francisco, State of California, this sixth day of June, 1912.

ROOSEVELT JOHNSON,
Vice-president.

(Corporate Seal.)

JESSE B. FULLER,
Secretary.

Countersigned by
G. W. FANNING,
Auditor.

UNITED STATES OF AMERICA.”

(b) The agreement of said The Realty Union to assume and pay the indebtedness against the said real property secured by the mortgage and trust deeds and liens hereinbefore specified, amounting to the sum of fifteen thousand four hundred ninety-five and 66/100 dollars (\$15,495.66), or thereabouts, and the payment to said Hattie Hardesty Chapman by the said The Realty Union, a corporation, of the sum of seven hundred and twenty-nine and 36/100 dollars (\$729.36) in cash; that pursuant to said agreement said The Realty Union did assume and paid said indebtedness which it had agreed to assume and pay as aforesaid.

13.

That subsequent to the time when said The Realty Union became interested in the real property upon which the said Hattie Hardesty Chapman claims a vendor's lien, it the said The Realty [158] Union

mortgaged the said real property, and that said mortgages do not purport to be subordinate to the said vendor's lien; that on July 28, 1914, said The Realty Union transferred said real property to Roosevelt Johnson, who, acting for said The Realty Union, made mortgages thereon to the Hibernia Savings and Loan Society, a corporation; that the first of said mortgages covered the southerly one hundred (100) feet of the entire tract, and was made to secure the payment of a loan to the said The Realty Union in the sum of five thousand dollars (\$5000). Said mortgage was recorded on July 29, 1914, in Liber 1069 of Mortgages, at page 393, in the Recorder's Office of Alameda County, California, and said mortgage is still in force and effect.

That in the same manner said Roosevelt Johnson on said July 28, 1914, mortgaged the remainder of said real property to said Hibernia Savings and Loan Society, a corporation, to secure a loan to the said The Realty Union, in the sum of five thousand dollars (\$5000). Said mortgage was duly recorded on July 29, 1914, in Liber 1069 of Mortgages, at page 393, in the Recorder's Office of Alameda County, California, and said mortgage is still in force and effect.

That said Hattie Hardesty Chapman did not make any objection to the making of said mortgages, or to the existence thereof, and that said Hattie Hardesty Chapman never asserted any right to a vendor's lien upon the said real property, or any portion thereof, until the said The Realty Union became involved in financial difficulties and failed to pay interest upon

its investment certificates.

14.

That in the transactions whereby the real property mentioned in the complaint was transferred to The Realty Union, a corporation, the said Hattie Hardesty Chapman was represented [159] by one William Carlton Wallace; that in said transactions said William Carlton Wallace acted as the agent for the said Hattie Hardesty Chapman; that said William Carlton Wallace, as such agent, participated in the negotiations resulting in the transfer of the real property mentioned in the *complaints* to said The Realty Union, a corporation. That the said William Carlton Wallace was at all times during said negotiations, and as such agent, familiar with the nature of the business which said The Realty Union, a corporation, was engaged in transacting; that the said Hattie Hardesty Chapman is chargeable with the knowledge of the said William Carlton Wallace.

That at the time the real property mentioned in the complaint was transferred to the said The Realty Union, a corporation, through the said Caro Mills and the said Roosevelt Johnson, acting for said company, both the said William Carlton Wallace and said Hattie Hardesty Chapman knew, and the facts were, that the business of the said The Realty Union was that of acquiring large tracts of unimproved real property, through the issuance, sale or disposition of certificates of the same character and form as those mentioned in the complaint, for the purpose of holding said real property and under a plan whereby

said real property was to be held for sale at an increased price.

That the obtaining of or the acquiring of any such certificates by Hattie Hardesty Chapman, constituted an investment in such enterprise of obtaining, holding and selling land.

That it was fully understood by the said Hattie Hardesty Chapman, at the time she acquired the said investment certificates hereinbefore mentioned, and it was a fact, that she was not to have any preferred right over any other holder of investment certificates in or to the real property mentioned in the complaint and which was transferred to said The Realty Union, a [160] corporation, except such right as might be acquired under the terms and conditions of said investment certificates, and through the exercise of any such rights as were created thereby.

15.

That the said Hattie Hardesty Chapman is estopped from claiming that she has any vendor's lien upon any of the property mentioned in the complaint; that said Hattie Hardesty Chapman fully understood and knew, when the property in the complaint described was transferred to said The Realty Union, that said The Realty Union had, prior to the time of any negotiations or dealings between the said Hattie Hardesty Chapman and said corporation, been engaged in issuing, was, at said time engaged in issuing, and would thereafter be engaged in issuing to persons rendering considerations equal to the full face value thereof, certificates in substantially the

same form as the investment certificates issued to the said Hattie Hardesty Chapman. That the said The Realty Union, a corporation, subsequent to the time of the issuance of the investment certificates mentioned in the complaint of the said Hattie Hardesty Chapman, issued investment certificates in the same form as those which had been issued to Hattie Hardesty Chapman; that said investment certificates aggregated several hundred thousands of dollars in amount; that as the said Hattie Hardesty Chapman well knew the said investment certificates so issued were acquired by innocent purchasers, and for value.

That as the said Hattie Hardesty Chapman at all times well knew, in acquiring the investment certificates mentioned in the complaint, it was a part of the plan and arrangement whereby said investment certificates were issued, that the certificate holders made an investment in acquiring their certificates, whereby all the investment certificate holders were equally concerned and shared the same risks, duties and privileges. That said plan was entirely inconsistent with the retention by the said Hattie [161] Hardesty Chapman of any vendor's lien in, or any special claim to, the property transferred to said corporation at the time said investment certificates mentioned in the complaint were issued to said Hattie Hardesty Chapman; that in accepting said investment certificates said Hattie Hardesty Chapman joined in said plan and became entitled to share equally with all other certificate holders in the benefits of said plan.

That the said investment certificate holders hereinbefore mentioned, are the same as those investment certificate holders who have presented their claims in bankruptcy in this proceeding, and as shown by the files in this cause.

FROM THE FOREGOING, THE COURT CONCLUDES:

That the said Hattie Hardesty Chapman, plaintiff and claimant herein, is not entitled to and has no vendor's lien upon the real property mentioned in the complaint, or any portion thereof, and that the said real property is free from any claim of the said Hattie Hardesty Chapman whatsoever, and it is accordingly

ORDERED that the prayer of plaintiff's complaint be, and the same is, hereby denied, and that the plaintiff is not entitled to and has no vendor's lien upon the real property mentioned in the complaint, and hereinbefore mentioned, or upon any portion thereof, and that the said plaintiff has no claim or interest in the said real property, aside from her interest as a general creditor of the estate of said bankrupt, and that the said Hattie Hardesty Chapman is not entitled to any relief herein.

The property herein referred to is described as follows: [162]

"All that piece and parcel of property located in the City of Oakland, County of Alameda, State of California, more particularly described as follows:

BEGINNING at the southeast corner of Telegraph Avenue and 45th Avenue (or street), which last mentioned avenue or street was formerly known as

Linden Lane, and running thence northerly along the easterly line of Telegraph Avenue, 253 feet, 8 inches; thence easterly, parallel with the line of said 45th Avenue, (or street) 125 feet; thence southerly, parallel with said easterly line of Telegraph Avenue, 253 feet, 8 inches, to the northerly line of said 45th Avenue (or street); thence westerly along the northerly line of said 45th Avenue (or street), 125 feet to the point of commencement, the same being a tract of land having a frontage of 253 feet, 8 inches on Telegraph Avenue, with a uniform depth of 125 feet, measured on a line parallel with the northerly line of said 45th Avenue (or street).''

Dated May 18th, 1917.

ARMAND B. KREFT,
Referee in Bankruptcy.

[Endorsed]: Filed May 18, 1917, at 2 o'clock and 25 min. P. M. A. B. Kreft, Referee in Bankruptcy.
[163]

(Title of Court and Cause.)

**Petition to Review Order of Referee Disallowing
Claim of Hattie Hardesty Chapman and Excep-
tion to Referee's Report.**

In the proceeding herein on behalf of said Hattie Hardesty Chapman, as plaintiff, vs. R. M. Sims, trustee, etc.

The petition of Hattie Hardesty Chapman respectfully represents that on May 18th, 1917, manifest error to the prejudice of complainant was made by the referee in the above-entitled matter and pro-

ceeding in a finding and order wherein and whereby said referee ordered and concluded that said Hattie Hardesty Chapman was not entitled to and had no vendor's lien upon the real property therein mentioned and that said real property was free from any claim of said Hattie Hardesty Chapman whatsoever and wherein and whereby said referee ordered that the prayer of said Hattie Hardesty Chapman be denied and that she be not entitled to a vendor's lien upon and that she has had no claim or interest in the real property described in her complaint aside from her interest as a general creditor of the estate of said bankrupt:

And said Hattie Hardesty Chapman hereby objects to the finding of fact and order of said referee as aforesaid and excepts thereto for the reasons hereinafter stated.

The said errors complained of are:

I.

That the evidence adduced before the referee is insufficient to justify the finding of said referee that the parcel of land commencing from the easterly line of Telegraph Avenue two hundred (200) feet northerly from 45th Street as described in the second paragraph of finding No. I of the finding of said referee was owned by William Carlton Wallace also known as William C. Wallace, [164] at the time referred to in said finding or at any other time, on the contrary, said evidence shows that said parcel of land was included in the sale to The Realty Union for which the entire consideration went to said

Hattie Hardesty Chapman and was in fact owned by her.

II.

That the evidence adduced before said referee is insufficient to justify the finding of said referee (See finding No. 12 subdivision 2 of paragraph I of said finding), that said property was not transferred by the said Hattie Hardesty Chapman to the said The Realty Union, a corporation, or to any of its agents or officers; on the contrary, said evidence shows that in the matter of said transfer said property was transferred by said Hattie Hardesty Chapman to the said The Realty Union, a corporation, through William C. Wallace acting as her agent.

III.

That the evidence adduced before said referee is insufficient to support the finding of said referee (See Third paragraph of finding No. 14) that the obtaining or the acquiring of said or any certificates by said Hattie Hardesty Chapman constituted an investment in the enterprise therein mentioned of obtaining, holding and selling land.

IV.

That the evidence adduced before said referee is insufficient to justify the finding of said referee (See Fourth paragraph of finding No. 14) that it was fully understood by the said Hattie Hardesty Chapman at the time she acquired the said Investment Certificates therein mentioned, or that it was a fact, that she was not to have any preferred right over any other holder of Investment Certificates in or to the real property mentioned in her complaint and which was

transferred to said The Realty Union, a corporation, except such right as might be acquired under the terms and conditions of said Investment Certificates, and through the exercise [165] of any such rights as were created thereby; on the contrary, the evidence adduced before said referee shows that at the time she acquired the said Investment Certificates she had no understanding with said The Realty Union or any one at all concerning her rights under the Investment Certificates other than appears from the language used in such certificates and that she did not have any understanding or agreement that she was not to have any preferred right over any other holder of Investment Certificates in or to the real property mentioned, but that it was a fact that she retained and reserved to herself and did not surrender any right in law or in equity that she might be entitled to in said real property by way of lien thereon.

V.

That said referee erred in finding from the evidence that the said Hattie Hardesty Chapman is estopped from claiming that she has a vendor's lien upon any of the property mentioned in the complaint.

VI.

That the evidence adduced before said referee is insufficient to justify the finding of said referee (See finding No. 15 end of first paragraph thereof) that the Investment Certificates issued by said corporation subsequent to the time of the issuance of said Investment Certificates to the said Hattie Hardesty Chap-

man were issued to or acquired by innocent purchasers, or for value, and is insufficient to justify the finding that said Hattie Hardesty Chapman well knew that said Investment Certificates so issued were acquired by innocent purchasers or for value.

VII.

That the evidence adduced before said referee is insufficient to justify the finding of said referee that said Hattie Hardesty Chapman knew in acquiring the Investment Certificates mentioned in the complaint, that it was a part of the plan and [166] arrangement whereby said Investment Certificates were issued, that the certificate holders made an investment in acquiring their certificates, whereby all the investment certificate holders were equally concerned and shared the same risks, duties and privileges.

VIII.

That said referee erred in concluding that the plan and arrangement whereby said Investment Certificates were issued, was inconsistent (See Second paragraph of finding No. 15) with the retention by the said Hattie Hardesty Chapman of any vendor's lien in, or any special claim to, the property transferred by said corporation at the time said Investment Certificates mentioned in the complaint were issued to said Hattie Hardesty Chapman, and that said referee erred also in his conclusions that in accepting said Investment Certificates, said Hattie Hardesty Chapman joined in said plan.

IX.

That said referee erred in concluding that said

Hattie Hardesty Chapman is not entitled to and has no vendor's lien upon the real property mentioned in the complaint or upon any portion thereof; and in concluding that the said real property is free from any claim of the said Hattie Hardesty Chapman whatsoever.

X.

That said referee erred in ordering that the prayer of plaintiff's complaint be denied and in ordering that said Hattie Hardesty Chapman is not entitled to and has no vendor's lien upon the real property mentioned in said complaint or upon any portion thereof, and that said plaintiff has no claim or interest in said real property aside from her interest as a general creditor of the estate of said bankrupt, and erred in ordering that said Hattie Hardesty Chapman is not entitled to any relief herein.

XI.

That said referee erred in his conclusions of law from [167] the evidence offered at said hearing.

WHEREFORE, said Hattie Hardesty Chapman opposes and excepts to the report of said referee and prays that she may be decreed by the Court to have her claim against said bankrupt estate allowed in full, that is to say, that she do have and recover against said R. M. Sims, trustee in bankruptcy of The Realty Union, bankrupt, judgment in the sum of Nineteen Thousand (\$19,000.00) Dollars together with interest thereon from the 6th day of March, 1915, to the date of the entry of the decree herein at the rate of six (6%) per cent per annum; that it

be declared and adjudged by said Court that said Hattie Hardesty Chapman has a lien as vendor upon the premises described in her complaint herein for the payment of said purchase money; that in case said defendant shall not pay said judgment or discharge said lien, that said premises may be sold and so much of the proceeds as may be necessary be applied to the payment of the judgment so rendered; and that plaintiff have such other further and additional relief and judgment as may be desired by her and as may be agreeable to equity, besides costs.

And said Hattie Hardesty Chapman also prays that said order entered herein by the referee on May 18th, 1917, be reviewed by the Honorable Judge of the District Court of the United States for the Northern District of California, and that she be restored to all things lost by reasons of the finding and order of the referee in said order.

HATTIE HARDESTY CHAPMAN,

W. W. A.

WM. M. AYDELOTTE,

C. A. S. FROST,

Her Attorneys.

(Duly verified.)

[Endorsed]: Filed June 12, 1917, 3 P. M. A. B.
Kreft, Referee. [168]

(Title of Court and Cause.)

Referee's Certificate on Petition to Review.

To the Honorable MAURICE T. DOOLING, Judge
of the District Court of the United States,
Southern Division of the Northern District
of California:

The undersigned, Referee in Bankruptcy, to
whom was referred the above-entitled matter, re-
spectfully certifies and reports:

That on May 18, 1917, an order was made herein
denying the claim of Hattie Hardesty Chapman to
a vendor's lien on certain real property belonging
to the estate of said bankrupt.

On June 12, 1917, within time extended by the
referee, said claimant feeling aggrieved by said
order, filed a petition to review the same.

Upon the hearing of the claim William A. Aydel-
otte, Esq., appeared for the claimant, and George
Clark, Esq., and R. H. Cross, Esq., and Arthur
Brandt, Esq., appeared on behalf of the Trustee.
The referee's findings of facts are contained in the
order reviewed.

The Realty Union was adjudged a bankrupt on
September 11th, 1915. R. M. Sims was elected
Trustee. On December 4th, 1915, the Trustee filed
a petition for an order to sell, free and clear of liens,
the real property of the estate, consisting of 41 par-
cels. An order to show cause was issued to the
various lien claimants including Hattie Hardesty
Chapman, to show cause, if any they had, why said

petition should not be granted, and to propound their claims before this court and show cause why the lien claimants and others claiming title should not be remitted to the proceeds of the sale of said property, in accordance with their interest therein.

On December 15th, 1915, Hattie Hardesty Chapman filed an answer to said order to show cause setting up a claim of vendor's [169] lien to certain real property in Oakland, having a frontage of 263.66 feet on Telegraph Avenue by 125 feet on 45th Street, and alleging that on the 11th day of May, 1915, the claimant filed an action in the Superior Court of Alameda County praying that it be declared and adjudged that claimant has a lien as a vendor upon said real estate for the payment of the purchase money. It was later agreed between the parties that the matter presented by said complaint in the State court be determined by this Court. On March 22d, 1916, the Trustee filed an answer to the complaint and on August 25th, 1916, an amended answer. A copy of the complaint is contained in the claimant's answer to the order to show cause. The pleadings consist of said complaint and the answer and amended answer of the Trustee thereto.

The business of the Realty Union was that of acquiring and selling real property. It issued what it termed "Investment Certificates." Prior to the transaction in question approximately \$400,000 has been received from the sale of its investment certificates. Up to December 31st, 1914, \$858,769.76 had been received from investors. The certificates are unsecured. Upon acquiring the property upon

which Hattie Hardesty Chapman claims a vendor's lien, the Realty Union paid Hattie Hardesty Chapman, \$729.36 in cash and issued to her two certificates, "Exs. 2 and 3," one in the sum of \$9,000 and one in the sum of \$10,000. No part of the \$19,000 has been paid, and said amount together with some interest thereon, is owing from said company to the claimant.

It is contended on behalf of Miss Chapman that said certificates are promissory notes and that her claim is for the purchase price of the property and is unsecured, and that under the provisions of sec. 3046 of the Civil Code, she holds a lien on said property for the balance owing to her. The section reads as follows: [170]

"LIEN OF SELLER OF REAL PROPERTY. One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer."

At the time of the transfer of the property to the Realty Union, it was encumbered by mortgages, deeds of trust and liens aggregating \$15,495.66; these liens were all paid by the Realty Union. The Realty Union subsequently mortgaged said property in the sum of \$10,000, which mortgages are still in force. One William C. Wallace, formerly was the owner of the property. He was engaged to be married to the claimant, Hattie Hardesty Chapman. In the consideration of love and affection he conveyed to her the portion of the property described in paragraph one, subdivision one, of the order reviewed, page 2.

The portion of the property described in paragraph one, subdivision two, page 3, had not been conveyed by him to Miss Chapman. On February 28, 1912, William C. Wallace and Hattie Hardesty Chapman conveyed to Caro Mills a portion of the property in question described in paragraph 3, page 6 of the order reviewed, which conveyance included the portion of the property the title to which stood of record in the name of William C. Wallace, and which had not been theretofore conveyed by Wallace to Miss Chapman, referred to in paragraph one, subdivision one of the order. The remainder of the property in question was on May 28th, 1912, conveyed by Miss Chapman to Roosevelt Johnson. Caro Mills and Roosevelt Johnson acquired the property on behalf of the Realty Union and it was subsequently conveyed to the Realty Union. As to the north 53 feet 8 inches fronting on Telegraph Avenue, which is the portion Mr. Wallace had not prior to the transfer in question conveyed to Miss Chapman, the Trustee contends: That the vendor's lien is not assignable and, therefore, the attempt of Mr. Wallace to give to the claimant his right to the part of the certificates issued for said portion was wholly ineffectual and caused a waiver of the [171] lien. He refers to several cases including *Baum v. Grigsbe*, 21 Cal. 173, quoting: "It is in the nature of a personal privilege unassignable, which the vendor can assert, only in a suit brought for the purpose of having it decreed and enforced."

The transaction in this case was not an assignment of certificates from Wallace to Miss Chapman,

he intended to give her the property. He claimed no interest in any portion of the moneys to be paid to Miss Chapman by the Realty Union for the property. The Realty Union did not obligate itself to pay him any portion of the moneys payable by it. It would have been quite a useless procedure, in view of the intentions of the parties, for Mr. Wallace to have made a deed to Miss Chapman, and then Miss Chapman deeding the property to the Realty Union. The fact that such formal steps of conveyance were not taken, would not defeat the vendor's lien.

The testimony of Mr. Wallace and Mr. Johnson shows that the transaction was arranged between Mr. Wallace representing the property and Mr. Johnson representing the Union. Mr. Wallace testified that he advised Miss Chapman to accept the proposition that he and Mr. Johnson had arrived at. Miss Chapman made objections, which objections Mr. Wallace stated, he had "rather to ignore." It appears that Mr. Wallace was fully advised of the character of the business conducted by the Realty Union, and he knew that the public generally had invested large sums with the Realty Union, without security, and to which investors had been issued the investment certificates. He knew that the ability of the company to pay these certificates at maturity depended upon the success of its scheme of operation and that such scheme contemplated the acquiring of real property to be sold at a profit. Mr. Wallace testified that he was quite sure he explained to Miss Chapman the nature of the certificates, and Mr. Johnson testified that he read over to her the certifi-

cates and explained to her that in the one case she owned a specific piece of property which might not increase in [172] value, but when she takes a certificate, she has an interest in all the company's properties, that therefore, there is a large chance of an increase of value because if one piece does not increase, another piece will.

Miss Chapman also testified that she noted the provision in the certificate that "Whenever the dividends paid its capital stockholders exceeded six per cent per annum, the rate of interest paid herein for the same period shall be increased to equal the rate of said dividends," but that she thought the dividends would not amount to anything. It might simply increase her interest, that instead of six per cent, they might be able to pay her seven per cent. She further testified that she understood that if the company made money, it would make it by buying and selling real estate. She further testified to the effect that she expected the company would sell the property she conveyed to it if they could do so to advantage.

In the case of *Claiborne against Castle*, 98 Cal. Rep. page 33, it was held that the vendor's lien, sec. 3046 of the Civil Code, is but a repetition of the common law and that under sec. 5 of the Civil Code it must be construed as a continuation thereof and not as a new enactment; "and that it is settled beyond dispute that the acts of a vendor which indicate a waiver of the lien may be shown by parol."

Counsel for the Trustee in his brief has cited a number of cases which in my opinion sustain his principal contentions, particularly the points made in

subdivision 2 commencing at page 14 of his brief and subdivision 4, page 23.

The transfer of the property to the company without restriction upon its resale, the vendee accepting investment certificates for the balance of the purchase price, with the knowledge that others had invested money with the corporation receiving only its certificates and that the company would continue [173] to receive investments from others, issuing to such investors like certificates, without security, the repayment of which investment certificates depended upon the ability of the company to bring to a successful conclusion its real estate transactions, which necessitated the resale of its properties, was inconsistent with the retention of a vendor's lien as against other investors both past and future.

The language used by the Court in the case of *Royal Consolidated Mining Co. vs. Royal Consolidated Mines*, 157 Cal. 737, I deem applicable here "The contract, viewed as a whole, evidences a scheme or plan of dealing which is inconsistent with the retention by the vendor of any lien on the properties."

I found that the property was conveyed to the company as an investment in its certificates. A claim upon such investment stands in the same condition as the claims of those who have advanced money to the corporation and received therefor its investment certificates.

As to the provisions for the exchange of certificates for property which the company might list for sale, without obligation on part of certificate holders to do so, it is my opinion that if a vendor's lien other-

wise existed that this provision could not be deemed the taking of security, and that the claim would still be a claim for the balance of the purchase price unsecured except by personal obligation of the buyer.

The following is a summary of the testimony:

WILLIAM C. WALLACE testified that he conducted negotiations with reference to the sale of the property in question, that the property was originally his; that he has transferred it in two parcels, the greater part belonged to Miss Chapman and he still retained a portion; that the property had been a long time under two mortgages and a deed of trust for money borrowed by him and for [174] which Miss Chapman had received no benefit; that he felt incumbent on him to do whatever was necessary to protect the property in connection with the mortgages; (page 66) that a foreclosure proceeding had been commenced by Mrs. Gardner of Oakland on a note for \$5,000; that he applied to Mr. Whitehead, who had been with the Realty Syndicate as agent and who was a stockholder in a number of banks, to help him out; that he, the witness, was one of the founders of the Realty Syndicate; that he offered to recompense Mr. Whitehead by giving him his equity in the property which he figured at \$2,000 if Mr. Whitehead would take whatever steps might be necessary to prevent the sacrifice of the property, that the matter was held in abeyance about 60 days before he came to a settlement, and in the meantime he had known about the Realty Union and that he offered Mr. Johnson (of the Realty Union) a proposition that if he would purchase the property for the Union

at a price to be agreed upon as fair and would furnish money enough to pay off the indebtedness, the owners of the property,—“and I assumed to act for Miss Chapman because she was a part owner in the property, though she was not involved in the difficulties therein”—“that we would accept for the balance of the payment the certificates of the Realty Union.” The thing figured out to the leaving of a balance of \$19,700.16 over and above the obligations which were deducted from the flat price that had been put upon it by the Realty Union or by Mr. Whitehead as coming to him. The Realty Union gave these certificates for the \$19,000. Those were made out to Miss Chapman, because it represented the value of her property. What was coming to him (Wallace) over and above the obligations, went to Mr. Whitehead as reward for “pulling us out of the hole.” That Miss Chapman became the owner of the property by deed of conveyance from him, and the consideration was love and affection; they were engaged to be married, at that time, and “it seems to be quite a sufficient consideration”; that he had no equity in the property after the conveyance; that he [175] knew the character of the business conducted by the Realty Union; that he was familiar with the character of the certificates issued by the Realty Union; had seen and read them; that during negotiations with the Realty Union he could not say he had consulted Miss Chapman,—“I think rather I took charge of the negotiations pretty much all myself, because it seemed to me to be the only thing to be done”; that he had made some inquiry

as to the assets and condition of the Realty Union and was satisfied that their assets were sufficient to leave them in a sound position at that time; (page 70) that he thinks that he expressed an opinion concerning the matter to Miss Chapman; that the opinion was that the company was certain to succeed to liquidate its indebtedness, including its certificates, according to their terms; (page 71) that "I advised her to accept the proposition which Mr. Johnson and myself, he representing the Realty Union and I representing the property, had arrived at with reference to this settlement of my embarrassment and the payment of the balance; that "I think she demurred considerably to it. My impression is that I had to persuade her a little bit. Perhaps I had rather to ignore her objections. That is my recollection; because I knew there was some little feeling grew out of it." I am quite sure that I explained (to Miss Chapman) the nature of the certificates; explanation was based upon the knowledge that I had acquired with the Realty Syndicate, which I had helped to promote, being one of the directors of the Syndicate and an officer of it; and I had remodeled the certificate over and over again and we had got them into shape, such shape that we thought was explicit in the language that we wanted to convey, and Mr. Johnson I think copied the form letter for letter"; that Miss Chapman knew he was conducting negotiations prior to the time they were closed; (page 72) that I think as near as I can recollect, that I told her (Miss Chapman) that the concern was expending money received from the investors in such a way that it was not in-

juring its solvency [176] nor its ability to meet its obligations when they should become due; investing in real estate, which is the only thing its charter permitted it to buy. Question by Mr. Aydelotte: "Then, as I understand, Mr. Wallace, the Realty Union agreed to pay the liens and taxes and encumbrances upon the property, and \$19,700 and some odd dollars, the \$700 and some odd dollars in money and the other \$19,000 represented by these certificates which I denominate promissory notes, is that right? A. Well, put the word 'certificates' in, yes, that was the understanding. They didn't say anything about promissory notes. That is a matter of opinion" (page 78). Q. I very adroitly put the question in that way, which I denominate "promissory notes"? A. Yes, I will say yes to that (page 79).

Counsel for the Trustee interrogated the witness as to information he had given to Miss Chapman concerning the business of the Realty Syndicate with which he was formerly connected. The referee asked the following question: "Mr. Wallace, was anything said to Miss Chapman about the fact that the certificates of the Realty Union, and their method of operation, including the exchange or the right to select real property in payment of these certificates, was similar to that of the Realty Syndicate? A. I would have to say no to the question as a whole, because I never—the similarity that I may have called attention to was with reference merely to the obligations and its interest-bearing features. I never contemplated the exchange of realty, because I never anticipated that and never knew it to be done up to that

time by the Realty Syndicate, of my own knowledge" (page 81).

HATTIE HARDESTY CHAPMAN.

Hattie Hardesty Chapman testified as follows:

Mr. Aydelotte produced a letter of which the following is a copy (page 3): [177]

"San Francisco, California, June 13, 1913.
Miss Hattie H. Chapman,
No. 2225 Pacific Avenue,
Alameda, California.

My dear Madam: Herewith I enclose my check of \$729.36, being the remainder of the amount due to you from the purchase of your property on Telegraph Avenue in Oakland. The taxes and releases amounted to \$332.56. The amount paid to Mr. Dinkelspiel was \$971.00. The amount assumed at the Farmers & Merchants Savings Bank was \$3,192.08. The amount paid to Mr. Whitehead was \$11,000.00, which items, together with your certificates and the enclosed check, complete this transaction.

Yours truly,

ROOSEVELT JOHNSON."

The witness identified the certificates "petitioner's exhibits 2 and 3" as being the certificates referred to in said letter, and stated that she transacted her business with Roosevelt Johnson, who said he was the manager; main man of the Realty Union; that with reference to the time of payment the balance of \$19,000 on the property he told her that he would pay at the end of ten years and was going to pay six per cent interest, that they had it down that they would only pay them every six months and I said

I needed the money oftener than that, so I would rather have it every month; so he said he would do that; and that the certificate was changed from interest payable semi-annually to monthly, pursuant to such request.

Question by Mr. Clark: (Pages 6 and 7.) "Q. Did you consult anyone in connection with this transaction at all? A. Yes, I had a man that arranged the sale for me.

Q. Was he an attorney or a real estate dealer?

A. Well, he had been an attorney, but he was not practicing at that time.

Q. Who was that man? A. Well, he was a friend of mine. Do you wish me to tell the name?

Q. Well, I am not particular. But you did consult with that man who had had experience in real estate matters, did you, and a man who had had some experience in law matters? A. Yes, he was supposed to have. He had not been practicing for a good many years, though. [178]

Q. He was a man of about what age? A. I think he was about 52, perhaps.

Q. Did he put this deal through for you? That is, was it he who, so far as you were concerned, originated or arranged for this deal?

A. Well, he told me about it, and so I decided to do it. That was all. I went up to Mr. Johnson, Roosevelt Johnson, to sell him the property.

Q. Was this proposition your proposition or Roosevelt Johnson's proposition? Were you endeavoring to sell your real property? A. I had had no other offer for it, but I wanted to sell it, as it was encumbered,

and it was an expense to me, and I thought this was a good opportunity to sell it if he wanted to buy.

Q. Had you listed this property with the man to whom you refer, for sale, telling him that you would like to have him find some one who would take it off your hands? A. I don't know as I asked him that, but he knew it was kind of bothering me, keeping up the taxes and all that, and I wanted to get rid of it. And as it was a hard matter to sell property at that time, I was glad to see Mr. Johnson and talk about it.

Q. And you thought that this was a very favorable price, did you? A. I thought it was all right.

Q. Now, had you told this man that you would like to sell this property?

A. Had I told him that?

Q. Yes. A. No, I had not told him that.

Q. How did the Realty Union become acquainted with the fact that you were desirous of selling this property?

A. Well, I suppose they must have known it was a good piece of property, and they probably had their eye on it and they wanted it, and they probably found out who owned it.

Q. And did you read these certificates when you received them?

A. I think Mr. Johnson read them over to me.

Q. How long before that had it been suggested to you that you should [179] take these investment certificates? Right at the time when the proposition was first mentioned was it suggested that you take these investment certificates?

A. Why, I don't know when we discussed it. I told them what property it was and so they said they would pay me in those notes.

Q. Did they call them notes or did they call them realty investment certificates when they first mentioned them to you?

A. Well, they probably called them that, I guess. That is their title to show for what property they got.

The REFEREE.—Q. You mean the investment certificates?

A. I don't remember just what was said. It is kind of hard to remember"; that she spoke a number of times about the matter to the *gentlemen* who was advising her (page 9); that she remembered that the certificate contained a promise to pay something in the way of dividends in the event that the dividends of this company exceeded a specified amount (page 9); that "I didn't think that the dividends would amount to anything, particularly to me, because I thought, well, if they had to make money, why, it would simply increase my interest"; that instead of getting six per cent they might be able to pay me seven per cent; something like that; that she understood that if the company made money it would make it by buying and selling real estate (page 10).

Respecting the piece of property sold by her she stated: "Well, I supposed they would try to sell it and I expected them to pay me for it.

Q. There was no restriction put by you at the time of these negotiations, upon them, in the nature of a

provision against their selling or dealing with this particular piece of property that you turned over to them? A. Why, no; I didn't care how they got me my money as long as they kept their word and paid me the money they owed me (page 11).

Q. You didn't expect that this particular piece of real property [180] would be reserved in any way, did you, and treated by them any differently than any other piece of real property which they might hold? A. I didn't think anything about it. I just sold them the property. And they expected to get me the money in ten years and to pay me my interest regularly. They paid me the interest up to a certain time, and then they stopped."

The witness' attention was called to the clause in the certificate: "Any owner of investment certificates of a paid-up value not less than \$100 may exchange them for unimproved realty held for sale by the corporation and was asked: You understand the meaning of a simple clause in that certificate, don't you? A. I guess I did, I didn't think much about it, though."

The witness was questioned concerning the investment certificates and the issuance of the same by the Realty Union and she answered that she supposed they had been dealing with other people in the same method as they had with her and supposed they had other certificates outstanding (page 13); and further testified that she told her attorney to find out whether the Realty Union had any unimproved property that she could change these certificates for (page 14). This was after the company had defaulted in its

interest payments. Question by Mr. Clark (pages 15 and 16):

“Q. You understood that. So far as the Realty Union was concerned and what they stated they would be willing to do, was not the proposition from the very outset that they would satisfy your demand to the extent of \$19,000 altogether with certificates, investment certificates? A. What did those certificates mean to me? They meant only that they were going to pay me so much money, didn’t they? What did I want of their little certificates? They didn’t mean anything to me except that they promised to pay me so much. It was \$19,000. I didn’t care about their little certificates. I only wanted their money. That is the way I had of their putting it down, to show me when they would pay it. So I took [181] their certificates. Otherwise they would not appeal to me. Would they appeal to you? I didn’t want to frame them.

Q. At that time they might have appealed to me.

A. They didn’t to me.

Q. What I mean is this: They never at any time said to you that they would pay you \$19,000 in cash and assume this mortgage?

A. They certainly did. Mr. Roosevelt Johnson said they would pay me \$19,000 at the end of ten years, and he issued those ten-year certificates bearing six per cent interest every month.

Q. Did he state that this, however, would be paid only in investment certificates? Didn’t he say that?

A. No, he told me he would pay me in hard cash. He didn’t say anything about investment certificates.

Q. Did he state that so far as the company was concerned, that the only way in which the company could satisfy this demand at the present time was by giving investment certificates?

A. He said he could not pay me the money now, but he would give me these papers, or whatever you call them, and he would give me my money at the end of ten years."

At page 19 she further testified concerning exchanging certificates for real property; that she requested her attorney to get a list of the properties they had to exchange; she wanted to see what they had; if they had anything very fine she might have considered it but that she did not consider it.

In reply to the question by Mr. Aydelotte the witness testified that at the time of receiving the certificates, Mr. Johnson had told her that this was valuable property, referring to the property sold to the Realty Union, and we were going to hold that to the very last because it would increase in value (page 26). She testified that she called upon Mr. Johnson with reference to exchanging her certificates for property and that Mr. Johnson stated he would advise her not to do so because if we stick together we [182] would pull through all right (page 26).

Question by Mr. Clark: "Q. Well, did you expect, when he told you that, that if it increased in value so that there was a chance for a selling of it at a good profit, that they would sell it at a good profit?

A. Why, sure they would have. That is business, isn't it?" Upon being asked what brought to her mind the advisability of turning in the certificates

for unimproved property she answered: "Well, if I could not get my interest, why then I suppose I commenced to worry about it"; and further stated that she wanted to get this property back that she had sold them and that Mr. Johnson said he was going to give her a mortgage on it (page 32); that if she could have found good property she would have exchanged certificates for it; that she had asked her attorney about it a half dozen times if he had gotten the list yet referring to the list of property of the Realty Union for the purpose of exchange (page 33).

W. M. AYDELOTTE.

Mr. W. M. Aydelotte, attorney for the claimant, testified that he made a half a dozen trips to the office of the Realty Union and had conversations with Mr. Johnson relative to a compromise settlement of this whole affair; that Mr. Johnson proposed we accept a note and a mortgage due in three years on this identical property. He claimed the property was worth some more, was worth some \$50,000 or \$60,000; that he asked if Mr. Johnson would let him have some lists of various properties which they had for sale and that he would look over them and if he could make an adjustment satisfactory to Miss Chapman he would see what could be done; that Mr. Johnson told him the condition of the Realty Union and that it was in a bad way (page 43).

ROOSEVELT JOHNSON.

Mr. Roosevelt Johnson testified that he is vice-president and [183] manager of the Realty Union; that Mr. Wallace first spoke to him about

the transaction in question. The witness related the transactions had with Mr. Wallace and with Mr. Whitehead and that Mr. Wallace arranged with him to buy the corner at a certain price (page 55), and mentioned the encumbrances upon the property and the disposition made of such indebtedness. He further testified that he acquainted Miss Chapman and also Mr. Wallace as to the affairs of the Realty Union; that Mr. Wallace was directly familiar with the affairs of the company; that he showed Mr. Wallace a financial statement of the company showing the amount of obligations and character of obligations, the amount of assets and character of the assets; that he gave all that information to Miss Chapman and to Mr. Wallace; that he showed Miss Chapman that in one case she owned a specific piece of property which may not increase in value but when she takes a certificate she has an interest in all our properties, scattered over a large district, therefore, there is a large chance for an increase in value, because if one piece does not increase another piece will; that Miss Chapman was familiar at that time with the fact that the Realty Union owned a great many properties, for I showed her that our holdings covered a large distribution; "This took place at the close of the transaction" (page 56), that he remembered reading the certificates to Miss. Chapman (page 57), that he showed her the amount of outstanding certificates which at that time was \$600,000 (page 58), that with reference to the certificates Miss Chapman wanted to know the shortest terms she could get, that he told her ten years (pages

57-58). Referring to Mr. Aydelotte, he testified Mr. Aydelotte asked him for a list of properties; that the first time he heard of a vendor's lien respecting Miss Chapman's property was after Miss Chapman commenced her suit (pages 59-60); (in the State court) referring to the conversation as far as he could recollect was that Mr. Aydelotte called for the purpose of getting for Miss Chapman something more [184] definite as security than the certificates, that he asked for a list of land not encumbered, that he told Mr. Aydelotte that if he would wait until he could make a good sale "we could pay off those mortgages and then I will give you clear land" (page 63).

Counsel for the Trustee sought to introduce evidence concerning the character of business conducted by the Realty Syndicate for the purpose of showing that a similar method of conducting business was followed by the Realty Syndicate, that Mr. Wallace was, as an officer of that corporation, familiar with the same.

The referee sustained objections to this testimony but counsel was permitted to make the same of record. I do not deem it necessary to review this testimony for the reason that I consider it unimportant. It appears that Mr. Wallace was thoroughly familiar with the character of the business conducted by the Realty Union and as far as Miss Chapman is concerned it appears from Mr. Wallace's testimony that Miss Chapman was advised that Mr. Wallace had been connected with the Realty Syndicate, but it also appears that her knowledge of the character of

the business conducted by the Realty Syndicate so far as she had been advised by Mr. Wallace, was of an indefinite character (page 43).

Mr. Johnson further testified that in June, 1912, there was outstanding in paid-up certificates of the Realty Union about \$600,000; that after June, 1912, more than \$100,000 was issued, that the only way the company would have derived anything in the way of dividends or profits would have been by selling its real estate, and they began selling about June, 1914; that the business of the Realty Union practically amounted to acquiring tracts of real property around Oakland and Berkeley, and holding the real property and selling it off at a profit (pages 10-11, Supplemental Testimony). Mr. Johnson identified an official statement of the Realty Union of June 29th, 1912, which showed that the concern had received from [185] investors \$457,038.19 in payment of investment certificates. He identified a financial statement of December 31, 1912, which showed received of investors \$550,484.69. It was this statement he said that he referred to when he said that the amount received from investors was approximately \$600,000. He identified a financial statement dated December 31st, 1914, in which statement under the heading of liabilities is shown "received from investors, \$858,769.76" and also one of December 31st, 1913, showing \$774,012.30 received from the investors. His attention was called to a statement of June 29th, 1912, under the heading of assets, "realty, \$1,039,009.65," he testified that this

realty was bought by cash, certificates and other securities.

FRANK A. GRACE.

Mr. Frank A. Grace testified that he had been connected with the Realty Syndicate, that he afterwards became connected with the Realty Union, and that the certificates of the Realty Union are approximately the same as the Realty Syndicate, because he used the Realty Syndicate plates and only made a few minor changes.

It was stipulated that Mr. Grace would testify the same as Mr. Johnson respecting the character of the business of the Realty Syndicate (page 15, Sup. Test.).

It was stipulated that the by-laws of the Realty Union contained the following provision: "Any owner of investment certificates may apply the amount paid thereon, on account of the purchase of unencumbered realty held for sale by the corporation" (page 15, Sup. Test.).

Commencing at page 17 in the Supplemental Testimony, certain stipulations are recited concerning the record title of this property and the encumbrances thereon existing from time to time.

Dated: June 28th, 1917.

Respectfully submitted,

ARMAND B. KREFT,

Referee in Bankruptcy. [186]

PAPERS TRANSMITTED HEREWITH.

Transcript of Testimony and Supplemental Transcript.

Order to Show Cause on Petition to Sell Real Property.

Answer of Hattie Hardesty Chapman to Petition for Order to Sell.

Answer and Amended Answer of Trustee to the Claim of Hattie Hardesty Chapman.

Brief of Trustee.

Miss Chapman's Closing Brief.

Order Disallowing Claim to Vendor's Lien.

Petition to Review.

Petitioner's Exhibits Nos. One to Six.

[Endorsed]: Filed at 3 o'clock P. M. Jun. 27, 1917. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [187]

(Title of Court and Cause.)

Opinion and Order Affirming Order of Referee.

WM. W. AYDELOTTE and C. A. S. FROST, for the Petitioner.

R. H. CROSS, J. A. ELSTON and BLACK & CLARK, for the Trustee.

RUDKIN, District Judge.

This is a proceeding to review an order of the referee disallowing a claim to a vendor's lien on certain real property heretofore conveyed to the bankrupt by the petitioner and one William C. Wallace. The facts are fully set forth in the certificate of the referee and will not be repeated here.

The claim of lien is based on section 3046 of the Civil Code of California, which provides:

"One who sells real property has a vendor's lien

thereon for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer."

The claim of lien is resisted by the trustee on three grounds: First, because the property was not conveyed to the bankrupt by the petitioner; Second, because security was taken for the payment of the purchase price; and Third, because there was an implied waiver of lien.

The first objection urged by the trustee is not well taken.

"We do not think that it is in all cases indispensable that the legal title shall have been vested in the party who claims the lien, nor that a deed or conveyance should have been actually executed by him. If he is the owner of the land in equity and controls the legal title, and if he causes the conveyance to be made, and is entitled to the purchase money, he is entitled to the vendor's lien therefor." *Loomis vs. Davenport & St. P. R. Co.*, [188] 17 Fed. 301. The facts in this case bring the petitioner within the rule there announced.

The claim that the purchase money was secured is based on the provisions of the investment certificates executed in consideration of the balance due on the purchase price. The first of these certificates for ten thousand dollars, reads as follows:

"No. 10219.

E.

\$10000

Investment Certificate,
issued by

THE REALTY UNION

Incorporated 1910, under the Laws of California.

Ten years after date, THE REALTY UNION promises to pay to HATTIE HARDESTY CHAPMAN of Alameda, California, TEN THOUSAND DOLLARS with interest at the rate of six per cent. per annum, payable monthly, and whenever dividends paid its Capital Stockholders exceed six per cent. per annum, the rate of interest paid thereon for the same periods shall be increased to equal the rate of said dividends.

6%

GOLD

6%

This Certificate is transferable only upon endorsement and surrender. Any owner of Investment Certificates of a paid-up value of not less than \$100.00 may exchange them for unimproved realty held for sale by the Corporation.

IN WITNESS WHEREOF, The Realty Union has caused this Certificate to be signed by its President or Vice-president and by its Secretary and countersigned by its Auditor at its office in the City and County of San Francisco, State of California, this sixth day of June, 1912.

ROOSEVELT JOHNSON,

Vice-president.

(Corporate Seal)

JESSE B. FULLER,

Secretary.

Countersigned by

G. W. FANNING, Auditor.

UNITED STATES OF AMERICA."

The second certificate is in all respects similar to the first except the amount, which is nine thousand dollars.

The claim that the purchase price was secured is based upon the provision of the investment certificate that,

“Any owner of investment certificates of a paid-up value of not less than \$100.00 may exchange them for unimproved realty held for sale by the corporation.” [189]

Assuming that this provision has any validity by reason of its uncertainty, the most that can be claimed for it is that it provides another means of payment and that, of itself, will not defeat the lien.

Brisco vs. Minah Consol. Min. Co., 82 Fed.
952.

I am constrained to hold, however, that a vendor's lien does not exist under the facts disclosed by this record. The Statute in question is declaratory in its nature and the lien there referred to is the lien long recognized by the Chancery Courts. In *Johnson vs. McKinnon*, 45 Fla. 358, that lien is defined as follows:

“The vendor's lien is that lien which in equity is implied to belong to a vendor for the unpaid purchase price of land sold by him where he has not taken any other lien or security for the same, beyond the personal obligation of the purchaser. Such lien is not the result of any agreement between vendor and vendee but is simply an equity raised by the courts for the benefit of the former, by whom it will

be enforced or denied between the parties, as the exigencies of each particular case may seem to require.”

In 39 Cyc. 1787, it is said:

“A vendor’s implied lien, as distinguished from a lien expressly reserved, or from the security which the vendor has, while he holds the legal title under an unexecuted contract to convey, is the equitable right, which by implication is accorded to one who has conveyed the title to land without reserving a lien thereupon, and has taken no security for the purchase money other than the personal obligation of the purchaser, to subject the land in equity to the payment of the purchase price, when the rights of others are not injured and it is equitable so to do.

This lien does not grow out of an agreement between the parties but is simply an equity raised by Courts of Chancery for the benefit of vendors of realty, which will be enforced or [190] denied as the exigencies of each particular case may require.”

The assertion of a vendor’s lien in this case is utterly inconsistent with the purposes for which the property was conveyed. The holders of all certificates were contributors to a common fund to be used and managed for the common benefit of all and persons who contributed real property in consideration of the receipt of such certificates occupy no more favorable positions in equity than those who contributed cash.

To allow the assertion of the lien here would destroy all equality between the different investors and would be inequitable in the extreme, especially in view of the fact that the moneys received from other

investors have no doubt been used to discharge the numerous liens existing against the property at the time the conveyance was made.

The order of the referee is therefore affirmed.

RUDKIN,
Judge.

[Endorsed]: At 10 o'clock and 30 min. A. M. Aug. 4, 1917. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [191]

(Title of Court and Cause.)

Petition for Appeal by Hattie Hardesty Chapman.

The above-named Hattie Hardesty Chapman feels herself aggrieved by the Decree and Order made and entered on August Fourth, Nineteen Hundred Seventeen, in the above-entitled cause; and does hereby APPEAL from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors which is filed herewith; and she prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated August 14, 1917.

WM. M. AYDELOTTE,
W. F. SULLIVAN,
C. A. S. FROST,

Attorneys for Hattie Hardesty Chapman.

Receipt of a copy of the foregoing Petition this 14th day of August, 1917, is admitted.

R. H. CROSS,
BLACK & CLARK,
J. H. ELSTON,

Attorneys for R. M. Sims, Trustee Herein.

[Endorsed]: Filed at 2 o'clock and 15 min. P. M.
Aug. 14, 1917. W. B. Maling, Clerk. By C. M.
Taylor, Deputy Clerk. [192]

(Title of Court and Cause.)

**Assignment of Errors on Appeal of Hattie Hardesty
Chapman.**

Now comes Hattie Hardesty Chapman, plaintiff and claimant in the above-entitled cause and proceeding, and, having prayed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the order and decree of said District Court, made and entered August 4th, 1917, respectfully represents, as grounds of appeal and as assignment of errors herein, that said District Court erred in the following particulars:

1. In holding that the evidence adduced before the Referee herein is sufficient to justify the finding of said referee in the particulars wherein said evidence is alleged to be insufficient to justify said finding as specified in paragraph numbered "I" of the Petition of said Hattie Hardesty Chapman herein to review the order of said referee disallowing her claim; and that said District Court erred in overruling the exceptions of said Hattie Hardesty Chapman

to said referee's report, as specified and contained in said paragraph numbered "I."

2. In holding that the evidence adduced before the referee herein is sufficient to justify the finding of said referee in the particulars wherein said evidence is alleged to be insufficient to justify said finding as specified in paragraph numbered "II" of the petition of said Hattie Hardesty Chapman herein to review the order of said referee disallowing her claim; and that said District Court erred in overruling the exceptions to said referee's report as specified and contained in said paragraph numbered "II."

3. In holding that the evidence adduced before the referee herein is sufficient to justify the findings of said referee in the particulars wherein said evidence is alleged to be insufficient to justify said finding as specified in paragraph [193] numbered "III" of the petition of said Hattie Hardesty Chapman herein to review the order of said referee disallowing her claim; and that said District Court erred in overruling the exceptions to said referee's report as specified and contained in said paragraph numbered "III."

4. In holding that the evidence adduced before the referee herein is sufficient to justify the finding of said referee in the particulars wherein said evidence is alleged to be insufficient to justify said finding as specified in paragraph numbered "IV" of the petition of said Hattie Hardesty Chapman herein to review the order of said referee disallowing her claim; and that said District Court erred in overrul-

ing the exceptions to said referee's report as specified and contained in said paragraph numbered "IV."

5. In holding that the evidence adduced before the referee herein is sufficient to justify the finding of said referee in the particulars wherein said evidence is alleged to be insufficient to justify said finding as specified in paragraph numbered "VI" of the petition of said Hattie Hardesty Chapman herein to review the order of said referee disallowing her claim; and that said District Court erred in overruling the exceptions to said referee's report as specified and contained in said paragraph numbered "VI."

6. In holding that the evidence adduced before the referee herein is sufficient to justify the finding of said referee in the particulars wherein said evidence is alleged to be insufficient to justify said finding as specified in paragraph numbered "VII" of the petition of said Hattie Hardesty Chapman herein to review the order of said referee disallowing her claim; and that said District Court erred in overruling the exceptions to said referee's report as specified and contained in said paragraph numbered "VII."

7. That said District Court erred in holding that said Hattie Hardesty Chapman is estopped from claiming that she has a vendor's [194] lien upon the property, or upon any of the property mentioned in her complaint herein.

8. That said District Court erred in holding that said Hattie Hardesty Chapman waived her vendor's

lien upon said real property.

9. That said District Court erred in concluding that the plan and arrangement whereby said Investment Certificates were issued was inconsistent with the retention by said Hattie Hardesty Chapman of any vendor's lien in, or any special claim to, the property transferred to said corporation at the time said Investment Certificates mentioned in said complaint were issued to said Hattie Hardesty Chapman.

10. That said District Court erred in holding that said Hattie Hardesty Chapman is not entitled to a vendor's lien, and that she has no vendor's lien, upon said real property; and in holding that said real property is free from any claim of the said Hattie Hardesty Chapman whatsoever.

11. That said District Court erred in holding that the prayer of plaintiff's complaint (the complaint herein of said Hattie Hardesty Chapman), be denied.

12. That said District Court erred in giving and making said order and decree August 4th, 1917, in that said order and decree is against law.

WHEREFORE, said Hattie Hardesty Chapman prays that the order and decree of said District Court of the United States, given August 4th, 1917, herein, be corrected and reversed.

August 14, 1917.

WM. M. AYDELOTTE,
C. A. S. FROST,
WILLIAM F. SULLIVAN,
Attorneys for Hattie Hardesty Chapman.

Receipt of a copy of the foregoing assignment of errors this 14th day of August, 1917, is admitted.
[195]

R. H. CROSS,
BLACK & CLARK,
J. H. ELSTON,

Attorneys for R. M. Sims, Trustee in Bankruptcy of
The Realty Union, Bankrupt, Herein.

[Endorsed]: Filed at 2 o'clock and 15 min. P. M.
Aug. 14, 1917. W. B. Maling, Clerk. By C. M.
Taylor, Deputy Clerk. [196]

(Title of Court and Cause.)

Order Granting Appeal and Allowing Supersedeas.

Hattie Hardesty Chapman, plaintiff and claimant in the above-entitled cause and proceeding, having heretofore filed herein her Petition for Appeal and her Assignment of Errors, said Appeal is **ALLOWED**. Said Appeal is to operate as a supersedeas of the order and decree appealed from upon said Hattie Hardesty Chapman giving bond in the sum of One Thousand (\$1,000) Dollars.

Dated August —, 1917.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed at 2 o'clock and 15 min. P. M.
Aug. 14, 1917. W. B. Maling, Clerk. By C. M.
Taylor, Deputy Clerk. [197]

(Title of Court and Cause.)

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That we, Hattie Hardesty Chapman, as principal, and United States Fidelity & Guaranty Company, a Corporation of the State of Maryland, as surety, are held and firmly bound unto R. M. Sims, Trustee in Bankruptcy of The Realty Union, a corporation, in the full and just sum of One Thousand (\$1000) Dollars to be paid to the said R. M. Sims, Trustee in Bankruptcy of The Realty Union, a corporation, his attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 14th day of August, in the year of our Lord One Thousand Nine Hundred and Seventeen.

Whereas, lately, at the District Court of the United States for the Northern District of California, in a suit or proceeding depending in said court between Hattie Hardesty Chapman, plaintiff, and R. M. Sims, Trustee in Bankruptcy of The Realty Union, a corporation, Bankrupt, in the proceedings in the caption hereof entitled, a decree was rendered against the said Hattie Hardesty Chapman, and the said Hattie Hardesty Chapman having obtained an Appeal and filed a copy thereof in the clerk's office of the said court, to reverse the decree aforesaid, and a citation directed to the said R. M. Sims, Trustee of

the said The Realty Union, a corporation, Bankrupt, citing and admonishing him to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in said Circuit, within thirty days from the date hereof.

NOW, the condition of the above obligation is such that if the said Hattie Hardesty Chapman shall prosecute her appeal to [198] effect and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

IN WITNESS WHEREOF, the said Hattie Hardesty Chapman, as principal, has hereunto subscribed her name and affixed her seal, and the United States Fidelity & Guaranty Company, has caused its name to be hereunto subscribed and its seal hereunto affixed by its Attorneys in Fact thereunto duly authorized the day and year first above written.

HATTIE HARDESTY CHAPMAN,
Principal.

Witness to signature of Hattie Hardesty Chapman:

W. E. TOMS.

UNITED STATES FIDELITY & GUAR-
ANTY CO.

By WILL LOVE,

By W. S. ALEXANDER,

Attorneys in Fact.

[Seal U. S. Fidelity & Guaranty Co.]

Approved:

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed at 2 o'clock and 15 min. P. M.
Aug. 14, 1917. W. B. Maling, Clerk. By C. M.
Taylor, Deputy Clerk. [199]

(Title of Court, Cause and Number.)

**Stipulation for Use of Original Exhibits Upon
Appeal.**

It is hereby stipulated by and between the attorneys for the above-named parties that in making up the transcript of the record on appeal the clerk may omit the exhibits introduced in evidence at any and all hearings of the above-entitled matter on behalf of said parties hereto and may transmit to the clerk of the Circuit Court of Appeals for the Ninth Circuit in San Francisco, Cal., the original exhibits in lieu of copying same in the record.

Dated: October 9, 1917.

WM. AYDELOTTE,
C. A. S. FROST,
W. F. SULLIVAN,
Attorneys for Plaintiff and Appellant.

J. A. ELSTON,
BLACK & CLARK,
R. H. CROSS,
Attorneys for Defendant and Appellee.

[Endorsed]: Filed Oct. 11, 1917, at 2 o'clock and
30 min. P. M. W. B. Maling, Clerk. By C. M.
Taylor, Deputy Clerk. [200]

(Title of Court, Cause and Number.)

Stipulation for Diminution of Record.

It is hereby stipulated and agreed by and between the attorneys for plaintiff and appellant and defendant and appellee hereinabove named that the clerk of the above-entitled court in following the praecipe for transcript of the record on file herein may omit the full title of the court and cause, except upon the Praecipe, and thereafter refer to same simply as "title of court and cause."

It is further stipulated that the clerk may omit all verifications and refer to same as "duly verified."

Dated October 9, 1917.

WM. AYDELOTTE,
C. A. S. FROST,
W. F. SULLIVAN,

Attorneys for Plaintiff and Appellant.

J. A. ELSTON,
BLACK & CLARK,
R. H. CROSS,

Attorneys for Defendant and Appellee.

[Endorsed]: Filed Oct. 11, 1917, at 2 o'clock and 30 min. P. M. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [201]

(Title of Court, Cause and Number.)

**Stipulation for Diminution of Record (Re Trustee's
Petition for Sale).**

That whereas, in the petition for order of sale filed

herein by R. M. Sims, Trustee in Bankruptcy of The Realty Union, a corporation, Bankrupt, certain paragraphs, to wit:

Paragraphs 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23, subdivisions lettered (a), (b), (c), (d), (f-1), (f-2), and (G) under subheading "Trust Deeds" in paragraph 25, and subdivisions lettered (i), (j), (K-1), (K-2) and (1) under subheading "Mortgages" in said paragraph 25, paragraph numbered 27, and the Exhibits numbered respectively "Parcel 1," 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 37, 38(1), 38(2), 38(3), 38(4) "Parcels 38-1, 38-2, 38-3, 35, are all irrelevant to the case of appellant herein and concern land in which appellant herein, Hattie Hardesty Chapman, has no interest.

Therefore, it is hereby stipulated and agreed by and between the attorneys for plaintiff and appellant and defendant and appellee hereinabove named that the clerk of the above-entitled court in making up the transcript of the record on appeal in the above-entitled cause, may omit from the pleading filed on the part of R. M. Sims, Trustee in Bankruptcy of the said The Realty Union, a corporation, Bankrupt, entitled "Petition for Order of Sale," each and every of the paragraphs and parcels and exhibits specified hereinabove and shall include in the said transcript only the following paragraphs and exhibits viz. paragraphs numbered "1," "2," "7," "9½," "24," "25" down to and including the subheading "Trust Deeds" and subdivision lettered

“E” under said subheading “Trust Deeds” and [202] subdivision lettered “H-1” and subdivision lettered “H-2” under subheading “Mortgages” in said paragraph numbered “25,” paragraph numbered “26,” paragraph numbered “28” and the Prayer of said petition and the exhibits numbered “Parcel 30” and “Parcel 81” attached to said petition, and may omit from said petition for order of sale all the rest and remainder of the said petition and of the exhibits attached thereto. Upon demand and at appellee’s election appellant will print and file any portion of the record so omitted and hereby consents to an order to the foregoing effect.

Dated October 29, 1917.

WM. AYDELOTTE,

C. A. S. FROST,

W. F. SULLIVAN,

Attorneys for Plaintiff and Appellant.

J. A. ELSTON,

R. H. CROSS,

BLACK & CLARK,

Attorneys for Defendant and Appellee.

[Endorsed]: Filed Oct. 31, 1917, at 11 o’clock and 30 min. A. M. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [203]

(Title of Court and Cause.)

**Stipulation and Order Extending Time to File
Record and Docket Cause to and Including
October 30, 1917.**

It is hereby stipulated and agreed by and between

the respective attorneys for the appellant and appellee hereinabove named, that the time within which said appellant shall prepare, serve and file her transcript on appeal herein may be and is hereby extended to and including the 13th day of October, 1917.

Dated August 31, 1917.

WM. M. AYDELOTTE,
C. A. S. FROST,
W. F. SULLIVAN,
Attorneys for Appellant.

R. H. CROSS,
J. A. ELSTON,
BLACK & CLARK,
Attorneys for Appellee.

Upon reading and filing the foregoing stipulation, it is hereby ordered that the time within which said appellant shall serve and file her transcript on appeal herein be, and the same is, hereby extended to and including the 13th day of October, 1917.

Dated September —, 1917.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed at 10 o'clock A. M., Sep. 7, 1917. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [204]

(Title of Court, Cause and Number.)

**Stipulation and Order Extending Time to File
Record and Docket Cause to and Including
November 13, 1917.**

It is hereby stipulated and agreed by and between

the respective attorneys for the appellant and appellee hereinabove named, that the time within which said appellant shall prepare, serve and file her transcript on appeal herein may be and is hereby extended to and including the 13th day of November, 1917.

Dated October 2, 1917.

WM. M. AYDELOTTE,
C. A. S. FROST,
W. F. SULLIVAN,
Attorneys for Appellant.
J. A. ELSTON,
R. H. CROSS,
G. CLARK,
Attorneys for Appellee.

Upon reading and filing the foregoing stipulation, it is hereby ordered that the time within which said appellant shall serve and file her transcript on appeal herein be, and the same is, hereby extended to and including the 13th day of November, 1917.

Dated October 5th, 1917.

WM. W. MORROW,
Judge.

[Endorsed]: Filed Oct. 5, 1917, at 2 o'clock and — min. P. M. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [205]

**Certificate of Clerk U. S. District Court to
Transcript on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of Cali-

fornia, do hereby certify that the foregoing pages, numbered from 1 to —, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the matter of The Realty Union, a Corporation, Bankrupt, No. 9510, as the same now remain on file and of record in the office of the clerk of said District Court; said transcript having been prepared pursuant to and in accordance with "Praeceptum" (copy of which is embodied in this transcript), and the instructions of the attorneys for claimant and appellant herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of —, and that the same has been paid to me by the attorneys for appellant herein.

Annexed hereto is the Original Citation on Appeal, issued herein, page —.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 10th day of November, A. D. 1917.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,

Deputy Clerk.

CMT. [206]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 9510.

In the Matter of THE REALTY UNION, a Corpora-
tion,

Bankrupt.

In the Matter of the Application of the Trustee to
Sell Real Property of the Estate of the Bank-
rupt Free and Clear From all Encumbrance,
etc.

HATTIE HARDESTY CHAPMAN,

Plaintiff,

vs.

R. M. SIMS, Trustee in Bankruptcy of THE
REALTY UNION, a Corporation,

Bankrupt.

Citation on Appeal.

To R. M. Sims, Trustee in Bankruptcy of The Realty
Union, a Corporation, Bankrupt, GREETING:

WHEREAS, Hattie Hardesty Chapman, claimant
and plaintiff in the above-entitled cause and proceed-
ing, has lately appealed to the United States Circuit
Court of Appeals for the Ninth Circuit, from an
order and decree lately, and on August 4th, 1917,
rendered in the District Court of the United States
for the Northern District of California, First Divi-
sion, made in favor of said R. M. Sims, Trustee in
Bankruptcy of The Realty Union, a corporation,
Bankrupt; you are, therefore, hereby cited and ad-

monished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the said District, within thirty days from the date hereof, to do and receive what may appertain to justice to be done in the premises. [207]

WITNESS the Hon. WM. C. VAN FLEET, Judge of said District Court, this 14th day of August, in the year of our Lord Nineteen Hundred and Seventeen, and of the Independence of the United States of America, the One Hundred and Forty-first.

WM. C. VAN FLEET,
Judge. [208]

[Endorsed]: No. 7867. In the District Court of the United States for the Northern District of California, First Division. No. 9510. In the Matter of The Realty Union, a Corporation, Bankrupt, etc., Hattie Hardesty Chapman, Plaintiff, vs. R. M. Sims, Trustee, etc., Defendant. Citation on Appeal. Filed At 9 o'clock and 30 min. A. M., Aug. 20, 1917. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.

Return on Service of Writ.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Citation on Appeal, on the therein named R. M. Sims, Trustee in Bankruptcy of the Realty Union, a Corporation, by handing to and leaving a true and correct copy thereof with R. M. Sims, Trustee in Bankruptcy of the Realty Union, a Corpora-

tion, personally at San Francisco, Calif., in said District on the 16th day of August, A. D. 1917.

J. B. HOLOHAN,

U. S. Marshal.

By J. Jessen,

Deputy. [209]

[Endorsed]: No. 3077. United States Circuit Court of Appeals for the Ninth Circuit. Hattie Hardesty Chapman, Appellant, vs. R. M. Sims, Trustee in Bankruptcy of The Realty Union, a Corporation, Bankrupt, Appellee. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed November 10, 1917.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

*In the United States Circuit Court of Appeals in and
for the Ninth Circuit.*

No. 3077.

HATTIE HARDESTY CHAPMAN,
Plaintiff and Appellant,
vs.

R. M. SIMS, Trustee, etc.,
Defendant and Appellee.

**Stipulation that Original Exhibits Need not be
Printed in Transcript on Appeal.**

It is hereby stipulated by and between the attorneys for the above-named parties that in printing the transcript of the record on appeal herein, the clerk of the above-entitled court may omit from such transcript and shall not print therein any of the original exhibits introduced in evidence at any and all hearings of the above-entitled matter on behalf of the said parties hereto, providing appellant will print or provide for the court any thereof needed or requested by respondents.

It is further stipulated by and between the attorneys for the above-named parties that any and all of the said original exhibits shall be considered by the above-entitled court in all respects as if they had been printed in the said transcript on appeal.

Dated November 15, 1917.

WM. M. AYDELOTTE,
C. A. S. FROST,
W. F. SULLIVAN,
Attorneys for Plaintiff and Appellant.
R. H. CROSS,
J. A. ELSTON,
BLACK & CLARK,
Attorneys for Defendant and Appellee.

[Endorsed]: No. 3077. In the United States Circuit Court of Appeals in and for the Ninth Circuit. Hattie Hardesty Chapman, Plaintiff and Appellant, vs. R. M. Sims, Trustee, etc., Defendant and Appellee. Stipulation that Original Exhibits Need not be Printed in Transcript on Appeal. Filed Nov. 17, 1917. F. D. Monckton, Clerk.